

roy's advertising of the Roblee and Buster Brown shoes, that "Mr. Gamble has insisted that the sales managers of these divisions get this situation straightened out and I am sure it will be." Mirra's denial that he had discussed Dutrey's first complaint with Pomeroy's cannot be reconciled with J. R. Johnston's letter of August 16, 1956, advising that both Mirra and the sales manager of the Roblee Division had authorized Johnston to give Dutrey their assurance that there would be no repetition of the Pomeroy advertising complained of. The conclusion is inescapable that either Johnston was giving Dutrey's false assurances in 1956 or that Mirra was not telling the truth in the course of his testimony in 1961. The denial by the Buster Brown salesman, Tufton, that he took any action is contradicted flatly by the memorandum of October 9, 1956, to Tom Curtis of the Franchise Division by the sales manager of Buster Brown, advising Curtis that Tufton had contacted Pomeroy's and had the account's assurance that there would be "no further cut-price promotions on our shoes at any time other than our Semi-Annual Sale periods."

The extent to which Fraver's and Pomeroy's acquiesced in respondent's attempt to suppress price competition is not altogether clear. The fact that respondent took active steps to achieve that goal is beyond dispute.

The conclusion that Brown's activities designed to suppress price competition between Dutrey and Fraver as well as Pomeroy's were not isolated instances but rather a part of respondent's general policy is supported by the testimony of Aarol C. Fleener, vice-president and board member of Brown, who admitted in this proceeding that:

[fol. 86] "Well, I will go back again; that we have to go over and see this fellow [a price cutting retailer] and try to dissuade him from that practice, because we get these protests from other people, and we have to go to it and attend to it.

"There are many, as I say, that will take place [instances of price cutting], and if it doesn't affect anything there is nothing done. But if it does affect another merchant you have got to make your peace over in that

area or you will lose several customers. So you have got to straighten it out.

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"... if a man is a persistent price cutter on his shoes and other merchants are complaining about it, we have got to see to it that he straightens out his practice."

These admissions of the witness compel the inference that respondent followed a policy of seeking adherence to its suggest resale prices at least in those instances where price cutting was the cause of friction among its dealers, as well as the further inference that respondent must have had an agreement or understanding with its dealers that prices be maintained, going beyond a mere unilateral announcement of policy to its customers coupled with the retailer's independent decision to adhere to the prices announced. In the absence of such an understanding, respondent's dealers would have no reason for complaint to Brown and the latter would have no reason for taking steps to "straighten out" errant retailers. It strains credulity to believe that respondent would act as arbitrator in such instances in the absence of any agreement.

The hearing examiner's finding that respondent is rarely faced with problems posed by price cutting on the part of its dealers is supported by the following exchange between the examiner and Mr. Fleener:

"Hearing Examiner Creel: When you take a new outlet that hasn't been in the shoe business you wouldn't know whether he is going to be a price cutter or not?"

[fol. 87] "The Witness: Oh, yes. You talk to him quite a while before you sell him telling him what is expected of him. . . ."

Respondent contends that in making the findings complained of, the examiner took Mr. Fleener's statement out of the context of his testimony as a whole, which reflected only a fundamental concern that Brown's retailers obtain a sufficient return on their product to stay in business. While

respondent may well have been concerned with the profit picture of its dealers, it is equally true that respondents prime motivation in straightening out price cutting situations, as is apparent from this witness' testimony, was to satisfy the complaints of competitors of the price cutting retailers.

The hearing examiner's finding that respondent had a policy of seeking adherence to suggested resale prices and that it required or attempted to require agreements to that effect from its dealers is not vitiated by Mr. Fleener's disclaimers irreconcilable with the documentary evidence that Brown could not dictate the price at which its customers were to sell. When Brown, at the behest of one dealer, confers with another dealer for the purpose of persuading the latter to raise prices or to refrain from advertising cut prices except at certain sale periods, it matters not whether respondent attempts to achieve the desired end by simple persuasion, appeals to the dealer's self interest, or threats of refusal to sell.<sup>40</sup> In either event, respondent has gone beyond the mere unilateral declaration of policy coupled with a refusal to sell, sanctioned by *United States v. Colgate & Company*.<sup>41</sup> Clearly, the *Colgate* doctrine extends only to those cases where the dealer independently decides to adhere to the prices of the manufacturer; it does not sanction respondent's attempt to suppress price competition among its retailers at the request of certain of its customers. Once respondent takes steps of this nature, neither [fol. 88] its own pricing decisions nor that of its customers may be considered unilateral.<sup>42</sup>

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<sup>40</sup> "... whether an unlawful combination or conspiracy is proved is to be judged by what the parties actually did rather than by the words they used. . . ." *United States v. Parke, Davis & Co.*, 362 U. S. 29, 44 (1960).

<sup>41</sup> 250 U. S. 300 (1919).

<sup>42</sup> See *United States v. Parke, Davis & Co.*, supra, note 40, at p. 46, where the Court held:

"... It must be admitted that a seller's announcement that he will not deal with customers who do not observe his policy may tend to engender confidence in

We have already held in connection with the charges under Count I of the complaint that the fact that contemporaneous documents and the subsequent testimony of the author of the documents and other participants to the events described are in conflict does not prevent the trier of fact from resolving the conflict on the basis of the documentary evidence. The hearing examiner is, of course, in the best position to evaluate the credibility of the witnesses who have appeared before him in the light of all the evidence. An examination of the record here convinces us that his finding that respondent has illegally taken steps to suppress and eliminate price competition between its customers is amply supported by the record.

Respondent's objections that the order entered below is too vague and indefinite to be enforceable and that it does not conform to the allegations of the complaint or to the evidence are without merit. The order merely prohibits respondent from further pursuing the unfair trade practices evidenced by this record and defines Brown's obligations thereunder with clarity.

The exceptions of respondent are denied and the initial decision as modified in the accompanying order is adopted as the decision of the Commission.

Commissioner Elman, considering that the exclusive ver-

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each customer that if he complies, his competitors will also. But if a manufacturer is unwilling to rely on individual self-interest to bring about general voluntary acquiescence which has the collateral effect of eliminating price competition, and takes affirmative action to achieve uniform adherence by inducing each customer to adhere to avoid such price competition, the customer's acquiescence is not then a matter of free individual choice prompted alone by the desirability of the product. The product then comes packaged in a competition-free wrapping—a valuable feature in itself—by virtue of concerted action induced by the manufacturer. The manufacturer is thus the organizer of a price maintenance combination or conspiracy in violation of the Sherman Act. . . .”



tical arrangements shown by the record have the requisite competitive effects, *Brown Shoe Co. v. United States*, 370 [fol. 89-91] U. S. 294, 323-324 (1962), concurs in the Commission's decision and order.

Commissioners Anderson and Higginbotham did not participate in the decision of this matter.

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[fol. 91A] BEFORE THE FEDERAL TRADE COMMISSION

**Transcript of Proceedings**

**OPENING STATEMENT BY MR. ROGAL, COUNSEL SUPPORTING  
THE COMPLAINT**

Mr. Rogal: This is a two-part complaint headed "Brown Shoe Company". Count I of the complaint charges a violation of section 5 of the Federal Trade Commission Act to Brown with respect to more than 800 of its customers who are independent shoe stores and who are referred to in the complaint, and will be referred to in this proceeding, as "Brown franchise stores;" that with respect to those more than 600 and less than 700 customers Brown has entered into a contract which requires this group of customers to deal exclusively with them to the exclusion of all other competitors producing and attempting to sell similar types of shoes.

Hearing Examiner Creel: Are you relying on a written contract for this provision?

Mr. Rogal: There is a written contract which was appended to the respondent's answer, and which will also be offered as a Commission exhibit, which contains the following provision:

"In return I will concentrate my business within the grades and price lines of shoes representing Brown Shoe Company franchises of the Brown Division and will have on lines conflicting with Brown Division brands of the Brown Shoe Company."

In answer to your question, Your Honor, we are relying upon the written contract, but we are also prepared to, and will, prove that the contract is enforced and that in the event a Brown franchise store persists in carrying or attempting to stock and sell the line of a competitor of Brown he is dropped from the Brown franchise program. However, under the program the Brown Company does not then refuse to sell the franchisee shoes. They will continue to sell him shoes, but they deny him certain services which he was granted on the condition that he deal exclusively.

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[fol. 91B] The amount of commerce, amount of sales, to the Brown franchise stores is in the neighborhood of 24 million dollars.

Hearing Examiner Creel: Annual sales?

Mr. Rogal: Annual sales to the approximately 700 Brown franchisees.

Counsel in support of the complaint contends that this is a substantial amount of commerce.

. . . . .

The effect of this contract and Brown operations under this contract is to foreclose and exclude competitors from a substantial segment of the shoe market—the segment represented by this approximately 24 million dollars in sales.

I feel that there is clear-cut legal precedent for Your Honor to find, without more, once it has been established, that (1), Brown is a dominant shoe company; (2), the amount of commerce of 24 million dollars is a substantial amount of commerce; and (3), that Brown does enforce these exclusive-dealing contracts with approximately 700 of its customers. Without more this is a violation of the Federal Trade Commission Act, section 5.

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[fol. 91C] OPENING STATEMENT BY MR. McROBERTS,  
COUNSEL FOR RESPONDENT

. . . . .

Mr. McRoberts: No. I think the evidence will show that, generally speaking, a typical franchise store will carry men's, women's, and children's shoes.

Hearing Examiner Creel: But you don't require it?

Mr. Roberts: But it is not absolutely required. Sometimes a Brown franchise store may carry only women's and children's shoes and still be a franchise dealer. Now, the same is true with respect to these shoes of conflicting lines.

It is true that if a dealer persists in carrying a conflicting line, a full conflicting line of shoes on occasions he will [fol. 91D] be dropped. On the other hand, there will be wait and see exactly what the evidence is to show the full of shoes but he is not dropped, and I think we will have to many instances where the dealer carries a conflicting line practice.

But the essence of this program, as we see it, is merely a program to keep the customers better satisfied, to stay customers of Brown. And whenever they cease to be satisfied they are free to leave and do leave. And other dealers sell to Brown; not only in supplementary lines but actually do sell to Brown franchise stores. Other manufacturers do in many instances in conflicting lines.

And this is a continual shifting, as you will find in any market. We just can't tie our customers down tight and keep them forever. We wish we could!

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**[fol. 92] Transcript of Testimony—March 16, 1960**

AAROL C. FLEENER, called as a witness for the Commission, testified as follows:

**Direct examination.**

Mr. Fleener is a coordinator at Brown Shoe Company. He is a Vice President and member of the Board of Directors. The term coordinator is a description of the duties. In other words, to plan the timing of supplies and shoes, the manufacturing of them, and coordinating that with the sales. His official title is Director of Marketing. This does not directly entail supervising any of the divisions or departments of Brown. Responsibility for direct supervision is not his task today.

He has been Director of Marketing since 1957. Prior to that he was Vice President in Charge of Sales of Brown Shoe Company. Each of the sales divisions and all the services attached to the selling operations were then under his supervision. The names of the sales divisions, including the 8 brand divisions are: Air Step, Naturalizer, Life Stride, Roblee, United, Capitol, Mound City, Risque, Robin Hood, Buster Brown and the Franchise Division. The witness was Vice President in Charge of Sales since 1948.

In his present position his connection with the sales departments of the company is the relationship of counsel for advice, from the standpoint of the types and styles of shoes to be stocked, the timing, the quantity, and setting it so that they are training some of the young men who are managing the respective lines of stock shoes so that they can more adequately do their job. On the basis of his background and experience with Brown, he feels that he is familiar with the sales policies which Brown has pursued, since 1957, at least.

The witness was asked what his duties were now in his present position with respect to Wohl, Regal, and Kinney division of Brown.

Mr. Burke: Mr. Examiner, I object to any evidence in relation to these divisions that Mr. Rogal has mentioned [fol. 93] as Wohl, Rogal, and any others which are not germane to the issues in this complaint. If it's just for expla-

nation only that might be one thing. But the complaint is directed to the Brown franchise stores and has nothing whatsoever to do with any other operations of the respondent.

Hearing Examiner Creel: I would like to hear from you.

Mr. Rogal: I beg to differ. The complaint is not directed only to the Brown franchise stores. Count II is specifically directed against Brown subsidiaries. The complaint also mentions and names in paragraph 2, the second subparagraph, the brand names of shoes sold by the Wohl Division.

Hearing Examiner Creel: Are these shoes sold by these division sold by retailers?

Mr. Rogal: Yes sir.

The Witness: Not by all divisions. Not by all divisions if he includes all of the divisions of the company.

By Mr. Rogal:

Q. Speaking of the Wohl Division, Mr. Fleener, they are sold to retailers?

A. They have a dual job. They sell to retailers, and they also operate leased departments and sell their shoes out of those leased departments, which would be a direct retailing job.

Hearing Examiner Creel: I will overrule the objection. You may answer.

The witness has no direct relationship with those subsidiaries other than being a member of the board of directors of Brown. There might be matters that would be discussed there, but not in great detail because the board doesn't go into those things too much at the board meetings. He is not a member of the board of directors of any of these subsidiaries. He would say the policies to be pursued by Wohl Shoe Division are established by the Brown board of directors under the direction of the executive committee.

[fol. 94] Some officers of Brown are also officers of Wohl. The Wohl division is a separate subsidiary company. Officers of both corporations, as he remembers it, are: Mr. Gamble, Mr. Hall and Mr. Griffin. Mr. Gamble is President of Brown and Chairman of the Board of Wohl. Mr. Milton Frank is a Vice President and member of the board of di-



rectors of Brown and he is President of Wohl. The position of the witness as head of marketing for Brown has very little bearing on Wohl. It has directly to do with the sales of Brown Shoe Company, as an operating company.

Commission's Exhibits 1, 90 and 91, which are Annual Reports of respondent for the fiscal years 1957, 1958 and 1959, respectively, were received in evidence, over respondent's objections of irrelevancy and immateriality.

The witness tries to keep alert regarding the market position or market penetration of Brown in the industry as a whole. There is relatively little source material available concerning market position. The National Shoe Manufacturers Association has figures that are presented to them through that organization. But there are relatively few actual facts on which the shoe industry is based. Much of it is based on the experience and know-how of what you have done in the past and what your relationship is with your customers and how you can hope to increase your business in the face of competition that exists. You, of course, have a price element in there to determine what retail price level you want to sell into and how are you can develop that, how far you want to go. For example, Brown stays in the medium-price field instead of being in the high-priced level or the low.

As to where you look to find the total market in the United States is and what the total production was, the witness answered that Government figures are compiled and then the Shoe Manufacturers, and then they have some sales information to work from. He thinks it's a sales manager's or sales bureau that gives Brown some information. Then also there is the information from which they obtain the relative strength or relative marketing power in each city and each community. Those are the figures that they work from to establish the value of a fol. 95 territory, the value of a market. They are not too authenticated, they are not too well developed, such as perhaps some other industries have. The source of this last information is Hearst's Buying Power Index. Brown's principal competitors publish their total sales. You know what the specific sales are from companies who publish their performance, and that's understood and compared.

The witness was shown Commission's Exhibits 89-A and

89-B. He had seen the two tabulations before. Based on his knowledge of the industry generally and from other sources, he considers these to be fairly accurate tabulations, insofar as figures are published. He guesses "Pairs Produced" are pretty authentic because they can come from the figures of the United Shoe Machinery Company, who have some record of the pairs that are made by each company.

Commission's Exhibits 89-A and 89-B were offered into evidence. Counsel for respondent stated for the record that the figures shown on Commission's Exhibits 89-A and 89-B with respect to the Brown Shoe Company, as indicated there for pairage or pairs produced and dollar sales for 1959, include both the dollar sales and pairage production of the G. R. Kinney Company, which is operated as a separate business with independent management under order of the United States District Court for the Eastern District of Missouri. The witness then stated that the figures on these two exhibits include the combined figures of Brown Shoe Company and its subsidiaries. Commission's Exhibits 89-A and 89-B were received in evidence over objections as to lack of relevancy.

The witness would think Commission's Exhibit 89-A represents the production of leather shoes that are made in this country. He suspects that rubbers and Keds and things of that kind are not included in this figure. The witness would estimate there are close to a thousand manufacturers in this country who make leather shoes.

Counsel for respondent here pointed out that the footnote triple asterisk in the exhibit, as to types of shoes, indicates it does not include slippers, canvas, rubber or plastic footwear.

[fol. 96] House slippers would be excluded from the exhibit. They could be of leather and have leather soles but they would still not be included here. Brown does not manufacture slippers of that type. It is pretty hard to say what types of shoes would be included in the particular list that Brown does not make. There are some companies. Wolverine, for example, who make work shoes. Brown does not make work shoes. All of that type of shoes would be in there. And in the top 70 there is a man who makes a process called "stitch-down shoes", which is a low priced shoe.

Brown does not make that kind. "Stitch down" is just the method of attaching the sole. It is a fairly low price and is not being used to any extent these days but it is used somewhat in low-priced selling children's shoes. The only difference is that it is a cheaper type and construction.

Functionally, work shoes might be the only thing included in here that Brown does not make. Brown does make a shoe that you can say is a work shoe. It is more of a gasoline station shoe. It isn't the type of shoes that are designed especially for linemen or lumberman or coal miners or people who do a specific kind of work.

The witness does not know whether he is familiar with the Leather and Shoes Blue Book of the shoe and leather industry. The National Shoe Manufacturers Association makes some figures available, and also there are some Government figures, and those are the figures they generally rely on when they are making marketing estimates. At this time Commission's Exhibits 86, 87 and 88 were offered and admitted in evidence over objections as to lack of materiality and relevancy.

Mr. Rogal: Your Honor, a note of explanation: We checked the tabulations here against some of the original census publications, and this appeared to be a shorthand way of getting this evidence in. A note of further explanation is outlined by Mr. Burke. The Bureau of the Census in its method of taking the census of shoe manufacturers is to have them report on each establishment. Thus Brown has 30 or more establishments, factories, and it will be listed, of course, 30 times. And the same with the other large companies International and General. So that the actual number of shoe and slipper manufacturers in the United States is not indicated in these exhibits.

Hearing Examiner Creel: Yes, I understand that.

At this time Commission's Exhibit 85 was offered in evidence. It is a tabulation showing United States production of footwear (except rubber) made on conventional shoe machinery each year during the period 1950 through 1959. As to what "conventional machinery" is, and roughly the proportion of shoes that are made on conventional machinery, the witness said he was not too familiar with the answer to that question because he hasn't been too close to

manufacturing figures. He could generally distinguish between conventional footwear and footwear made by the vulcanizing process. These figures are the shoes that are manufactured on what they call "conventional machinery" and then a listing of pairs made by other methods. The hose slippers, which do not have all the leather equipment and things that they have in their regular factories. The vulcanized or plastic shoes are in a vulcanizing unit, and that is a different thing. And then the rubber companies produce their footwear by a vulcanizing process. So in a general sense of saying these figures are the shoe production on the machinery, this would be the listing of them. Commission's Exhibit 85 was received in evidence.

The witness based his estimate of approximately 1,000 shoe manufacturers in the United States on the government figure listing manufacturers, not establishments. They may come to Brown through the National Shoe Manufacturers Association. The number of employees in each of the Brown factories would vary. It is in the neighborhood of probably 400 employees up to 500 to 600 per factory. As to whether a factory with less than 20 employees could be a factor in the shoe industry, the witness answered that the shoe industry is made of some shoes that are designed for some specific purpose, and they might be hand-made or high priced or they might meet a certain foot condition; and, as such, there would be a few pairs made, and [fol. 98] such a manufacturer could make and sell that product. It would not be a very substantial production or have much effect on the market, of course. As Director of Marketing, he would not consider a factory of less than 20 employees a substantial competitor to be reckoned with.

Brown Shoe company does not, from their operating position have any retail outlets. From the standpoint of subsidiaries, they own some retail outlets. These figures are from his memory and may not be entirely accurate—Wohl would operate somewhere in the neighborhood of 380 leased departments. Wohl signs the lease with a department store. It isn't the same kind of lease as you would lease a building to operate a shoe store in. It has clauses that permit either one of them to abandon the lease if they find it necessary. Whereas a shoe store would be leased for a definite period of time. These leases are in department

stores or ready-to-wear stores, with the exception of a few shore stores that they run. They have probably in round figures 16 to 17 stores and around 380 leased departments. Wohl operates the leased premises with their own employees who are paid a salary to Wohl.

As to whether the total figure of Wohl leased departments could be approximately 457, the witness said there are two ways to look at it. In some stores they will have more than one department, and for their bookkeeping they would have maybe 2 or 3 or 4 within one store. The figure he quoted from memory is the total of actual stores they would be in. If you had a store in a given department store, you could classify that as one shoe operation. For example, Famous-Barr may have several departments within their store selling shoes, but you would think of it as one shoe business when your thought of Famous-Barr. And in that sense it would be one store with maybe 2 or 3 shoe departments or maybe one. In other words, a store which had 3 or 4 outlets, he would consider that as one lease, one operation, in that community.

Mr. Burke: Your Honor, I would like to object to this line of testimony and move to strike all reference to the [fol. 99] Wohl Shoe Company. I appreciate that you have ruled adversely to me on the ground of my previous objection, which was based on the materiality and relevancy of any evidence with regard to Wohl.

As I read even Count II of the complaint, that goes beyond background information from the competitive area of the general shoe business. As I read even Count II, that is not directed against any activities being alleged as unfair competition with regard to Wohl. They talk about Brown and make certain allegations about Brown through its retail store operator customers. It doesn't refer to any outlets other than that type of retail operation.

So I respectfully submit that this type of testimony is irrelevant and immaterial and should be stricken from the record.

Hearing Examiner Creel: I don't see that it is of any great importance. What specifically do you contend that this evidence would prove?

Mr Rogal: Your Honor, the Wohl division of the Brown Shoe Company is an integral part of Brown.

Hearing Examiner Creel: Yes.

Mr. Rogal: It is referred to not as the Wohl Corporation but in all of the exhibits as the Wohl division.

Hearing Examiner Creel: I understand that. But what difference does it make whether or not Wohl has 380 or 450 retail outlets? That's what I am trying to find out.

Mr. Rogal: Well, I am trying to show the size and capacity of the Brown Shoe Company in this industry.

Hearing Examiner Creel: Yes.

Mr. Rogal: I want to——

Hearing Examiner Creel: And you have some size figures.

Mr. Rogal: Yes, sir. The number of outlets which are controlled by Brown when considered in connection with [fol. 100] the number of franchises which are restricted, according to the complaint, in their purchases. I think that it is relevant to this proceeding to learn the total number of retail outlets in connection with the total number of retail outlets in the United States that are under the control of Brown or of its Wohl division. And that's what I am attempting to do.

Now, insofar as Wohl not being considered in this complaint, paragraph 11 advises that through its sales divisions and subsidiaries Brown sells——

Hearing Examiner Creel: Oh, I agree with you on that, that Wohl is included. But what I was trying to determine was what the significance was whether or not Wohl had 380 or 457 retail outlets. That's a relatively small number compared to the number of 10,000 total outlets which somebody has said is approximately correct.

Mr. McRoberts: I think 70,000 was the figure. Your Honor.

Hearing Examiner Creel: In other words, if it was a significant part of the total I would agree with you completely. But, since it is a relatively insignificant part of the total, I just don't understand.

Mr. Rogal: Which total? I don't understand.

Hearing Examiner Creel: Of the total retail outlets in the country.

Mr. Rogal: Well, the total retail outlets in the country, Your Honor—and the retail outlet is classified as a store



selling at least 50 percent of its total sales in shoes—is approximately 22,000. That is in Commission's exhibit——

Mr. Burke: Well, may I point out that in Commission's Exhibit 88.

Mr. Rogal: —Commission's Exhibit 88, yes.

Mr. Burke: —which was offered, it shows retail outlets in the United States as totaling some 70,000 plus. A leased [fol. 101] department that has been referred to by Mr. Rogal is not an independent shoe store as such but would be classified as a retail shoe outlet in the department store classification shown in the table at the top of Commission's Exhibit 88.

Hearing Examiner Creel: All right. What is the pending question, Mr. Reporter?

Mr. Burke: It is a motion to strike.

Hearing Examiner Creel: I will overrule your motion to strike; but I will say that it is not of any great significance whether the number of outlets which Wohl has is 380 to 457.

By Mr. Rogal:

Q. How many outlets are owned by the Regal division?

Mr. Burke: Your Honor, I make the same objection on the ground of immateriality and lack of relevancy in this proceeding. Apparently we are starting off on a similar line of questioning similar to this Wohl matter.

Hearing Examiner Creel: I will overrule the objection and let him go for a while on it.

Mr. Burke: May I have a continuing objection to this line of questioning?

Hearing Examiner Creel: Yes, sir.

The witness is not currently familiar, but it is his recollection that Brown would have in the neighborhood of 90 to 92 stores under the Regal name. Kinney, as he recalls is somewhere in the neighborhood of 480.

Q. What is a Wohl plan account?

Mr. Burke: Your Honor, please, I make the same objection to lack of materiality and relevancy to any issue in this proceeding; that this line of questioning doesn't

prove or disprove any issue in this case. And we seem to be getting very far afield.

Hearing Examiner Creel: I take it, Mr. Rogal, that a Wohl plan account is something different from a Wohl retail account. Is that correct?

[fol. 102] Mr. Rogal: I think so, sir.

Hearing Examiner Creel: Overrule the objection.

The Wohl people could answer these questions better, but they have some young men that they will help get a lease and they provide him with a stock of shoes, which he pays for on some method they have of paying for it, maybe a weekly or monthly basis. They reimburse Wohl Shoe Company for the merchandise until they have got it paid up. So it is a method by which a man with not quite adequate capital to go into business can be helped to that extent and they work with him closely to make sure that he is doing all right and is successful, so that they do not lose their investment or that he doesn't lose his. The witness does not know how many Wohl plan accounts there are.

#### STIPULATION

Mr. McRoberts: Subject to objections as to the materiality and relevancy, Brown will stipulate that on May 1, 1958, there were 647 stores in the Brown franchise program. The Regal division had 92 outlets or stores. There were on that date 208 shoe dealers operating on the Wohl plan, sometimes referred to as "Wohl plan accounts."

On that date Wohl had leased departments in 243 stores. In some of those stores there were separate departments for accounting purposes; and if those separate departments be considered as separate retail outlets, which we do not think they should be considered as, the figure would be 457.

On that date Kinney had 418 outlets.

At that time there were over 70,000 stores selling shoes.

The census department at that time however, classified a shoe store as one that had over 50 percent of its gross receipts entirely from the sale of shoes. This would obviously eliminate the department stores, specialty stores, and the like, which sell a great many shoes. According to the census

figures there were some 22,000 shoe stores meeting that definition of the Census Bureau.

[fol. 103] The percentages of Brown and of the other manufacturers in relating outlets to the total number of outlets would have to be accurately computed dependent upon what kind of outlets you are talking about.

Does that give you the information?

Just to further clarify this, in the figure of 243 stores under the caption "Wohl Leased Departments," that included approximately 16 stores. The basic Wohl operation is of a leased shoe department in a department store, but Wohl did operate 16 shoe stores.

Hearing Examiner Creel: Is that stipulation agreeable, Mr. Rogal?

Mr. Rogal: That's agreeable to me; yes, sir.

The witness was asked to go down the list and when a plant is not a shoe manufacturing plant just indicate what it is, whether it is a supply plant, a warehouse, or whatever it is. Ironton, Mo. and Kenton, Tenn., are supply plants. Piedmont, Mo. is a supply plant. Gravois is a supply house. Gustine and Bingham is a shoe warehouse. Seventeenth and Lucas is Wohl's warehouse. Steelville, Mo. is a supply plant. Trenton, Ill., as a warehouse. Trenton, Tenn., is a warehouse, a supply and warehouse. The witness is not familiar with the Whitman, Mass. There are two listed, one could have been a warehouse, they are both sold. In Canada there are two listed. He would say they are factories. The remainder listed are shoe manufacturing plants, manufacturing one or more of the Brown shoes. This includes Kinney and Regal factories. Wohl doesn't have any factories. They have a supply plant, a warehouse at 17th and Lucas.

Commission's Exhibit 2 was offered in evidence. Counsel for the Commission said it is a breakdown of the sales of Brown, showing the sales of the various divisions and their relationship to the whole. Commission's Exhibit 2 was received in evidence, over objection as to lack of materiality and relevancy.

Commission's Exhibit 3 was offered in evidence. Counsel for the Commission said it is a letter from Brown Shoe [fol. 104] Company, dated June 9, 1958, to Mr. Sanger of the Federal Trade Commission, showing dollar shipments

of Brown Shoe Company, including shipments to Brown franchise stores, for the 3 year period 1955 through 1957. Commission's Exhibit 3 was received in evidence without objection.

The witness would say the shipments to the Brown franchise stores which are shown on the Exhibit, are included in the total shipments of Brown shown on the Exhibit, because they are shown as a percentage of the total. The figure of \$111 million shown as the total sales of Brown in Stipulation No. 8, on page 4 of Commission's Exhibit 121, includes the figure of approximately \$24 million also shown there as sales to Brown franchise stores.

On Commission's Exhibit 3, the net shipments of Brown shown there include the sales by Mound City and Capital in the figure of \$120 million. The Mound City and Capital divisions are sales of make-up shoes to the chains usually and big mail order houses. The total sales figure is the total of all sales of all products to all customers through Brown Shoe Company as such, which is the manufacturing and operating business. The figure does not include the retail sales of the subsidiary.

The subdivisions of the Brown division, such as Air Step, previously listed by the witness, are selling divisions within the operating company. The term Brown Division has been used to imply the operating company making the shoes and selling them, to distinguish between that and the retail subsidiaries. That would be in the making of the shoes, buying the materials, and the warehousing of the shoes to their customers. There are subdivisions within what it termed the Brown Division that are selling divisions.

Mr. Johnston is in charge of the Brown franchise division. His superior is Louis Schaefer, the Vice President in Charge of Sales. In the headquarters staff of that division are Mr. Johnston, and his assistants, Tom Curtis and a man by the name of Carroll. As to what the responsibility of Mr. Johnston is, the witness would have to more or less [fol. 105] define the function of the franchise division. He said, it is primarily to help a merchant do a better retail job. It was started some 30-odd years ago. And he has in the field a group of what we call fieldmen that have different segments of the country that combine the whole and

look after these merchants who are within the territory, to aid them in any way that they can. For example, on window trims or in records, for doing a better job. And so these fieldmen report then to Dick Johnston as to their performance in the field.

The function of the department is to help that merchant do a better merchandising job and be successful in what he has set out to do. It is over and above the normal selling procedures that we have where we have a sales force that goes out to sell a man his shoes. This group of men can be auditors from that standpoint of helping them with their figures as they need them. Or he can help them lay out a buying plan, to set up figures for certain kinds of shoes, so his money is divided out in such a way that he can do the very best retail job without having the pressure of selling attached to it. So in that sense we have helped many merchants over the past years to do a better job, and the record shows it.

Mr. Johnston is responsible for the operations of his division. Whether he has the authority to make appropriate decisions within his division is a difficult question to answer. For example, the sales department is interested in selling an account, and he is subject to the supervision of the sales head. It's good business to have good relations with your customers. And so if he had a problem to resolve he would undoubtedly confer with his superior before he made a decision on his own if it was a very important one. The routine decisions he carries out because he is operating his department.

The franchise accounts do not get any more lenient credit terms than Brown's other accounts. There is no difference. The witness said, it's a guidance program. The retailing of shoes is not a simple matter, and it takes a lot of skill to buy a group of shoes, a group of styles and bring them in the sizes, and sell them out and have enough left when he [fol. 106] gets through with his expenses and mark-downs to have a profit. And it is highly competitive. Because of that condition, and because of there being more than an adequate supply of shoes, it's a very difficult business to come out with a profit. And, so, many years ago this was conceived in our company, and over the period of years it has developed into a program that has been very beneficial,

we think, to many merchants, and it has been beneficial to our company in our relations with our customers. It is a function over and besides selling, which will help these people do a better retail job.

It goes into helping with their store or with their leases. Many a retailer is the owner, his wife is interested in it with him, and he is not too highly skilled in making deals with the landlord. So he is helped in that situation to know how much he should pay or what kind of an arrangement he should make. Because if the lease on a retail business is too high it is extremely difficult for that merchant to do a decent service job for his community. So he is helped in that sense. And Dick Johnston's fieldmen are trained. They are usually a retailer who has been successful, who he interests in coming into this work, and he is trained in the know-how of doing a good job so he gives that guidance and direction to those merchants.

The total personnel of the franchise division include the fieldmen and the three officials previously named. There are about 16 fieldmen. The stipulation indicates 682 Brown franchise dealers were being sold by Brown as of November 20, 1959.

Q. I believe the stipulation also indicates that with a certain number you have entered signed franchises and with another number you have not entered signed franchises. Is there any difference in the treatment afforded by Brown to these various accounts, whether they have a franchise signed or not?

A. No. The performance is better usually with a man who signs because he is more intent on carrying out the things that are set out and understood because if you are watching your inventory—That's the principal reason for these reports, that the man himself will know what condition he is in. And the reports are just a form that permits him to look on one sheet of paper and determine how he stands. And that's done at intervals.

Q. Well, we will get into that a little later, Mr. Fleener. Is there any difference, then, in the policy of Brown toward a man if he hasn't signed and a man who has signed?

A. If he is on the franchise program?

Q. Yes.

A. No difference.



The officer in charge of running the other divisions, such as Roblee, Pedwin, etc., is a division head whose title is Manager of his sales division. He is responsible to the head of sales, Mr. Schaefer. He would have a few people in the office who were employed to process his orders, to order the shoes from the factories and to give service to their customers in the way of credits and taking care of their orders. So the size of those divisions would vary, based upon the amount of business they do. Shoes are presented to prospective customers by sales men who have territories that are defined, and they travel and seek business within those limits. The salesmen handle only the brand of the division with which they are associated. There is a sales force for each division. If a store, Brown franchise store or otherwise, were handling 3 or 4 brands of Brown shoes, it would have 3 or 4 Brown salesmen making calls. The salesmen are compensated on a commission basis.

The witness was shown Commission's Exhibits 4 and 5 for identification. These exhibits are a list of the names under which Brown sells its brands. One brand was added to Commission's Exhibit 5. It is Smartaire, a new line added within the last year and a half. Commission's Exhibits 4 and 5 were received in evidence without objection.

The other brands of shoes shown on page 15 of Brown's Annual Report for 1959 (Commission's Exhibit 91), and not listed on Commission's Exhibits 4 and 5, are handled through subsidiaries. Brands of Wohl Shoe Company are: Jacqueline, Connie, Corelli, Marquise, Natural Poise, Petite Debs and Paris Fashion. The Kinney brands are: Educator, Enzel, Kinney's, Revette, Stuart Holmes and [fols. 108-117] Style-Craft. Regal's brand name is Regal. The rest of the brand names are brand names of Brown Shoe Company. Tread Straight is a shoe within the Buster Brown line, and the Miss America is a name within the Proper-bilt line. Proper-bilt and Miss America are girls' and children's shoes. They are not a major line. They are sub-lines.

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At this time Counsel for the Commission offered as a group, price lists and descriptive catalogs of the various Brown lines. They are numbered for identification as Com-

mission's Exhibits 6 through 21-C. Commission's Exhibits 6, 7-A through 7-R, 8, 9-A through 9-J, 10, 11-A through 11-R, 12, 13-A through 13-K, 14, 15, 16, 17-A through 17-F, 18, 19-A through 19-F, 20, and 21-A through 21-C, were received in evidence without objection.

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[fol. 118] Mr. Rogal: He knows of no estimate or compilation which would show a breakdown of sales in the average family for percentage of rubber goods and percentage [fol. 119] of sneakers. There is a set of figures that's published as to how many shoes are sold in each price range. He thinks that's put out by the Boot and Shoe Recorder. Somebody that makes the facts and figures on what is purchased yearly. It shows how many shoes are sold at each price. But as to what a retailer would do in a store, there are too many variations. He doesn't think there would be any tell-tale pattern that would be worth much after you got it.

The witness was asked what types or categories of shoes, not manufactured by Brown, a family shoe store in an average size city would stock, in order to have a complete line of shoes of all types for all members of the family. The witness stated that many family stores will find it necessary to sell a man's shoe at a higher price than Brown would make. There are individual lasts that are put in by some manufacturers who would cater to a certain foot correction or foot problem. That would be made by other manufacturers. That could be in different prices, of course. He mentioned work shoes before, and that large field Brown does not reach in spite of the fact that they may have one that might fit garage or service station men. There are plenty of low priced shoes that would be well under what Brown makes that a store would handle.

There are many different kinds of stores. A family store might be devoting itself to a level that was pretty much the price level that Brown makes, and on his dress shoes he would use a large part of their shoes. He still might find some specific shoe or some one item which he thought he would have to buy, which he would go ahead and do. A typical family shoe store stocks athletic shoes of the basketball or tennis variety, and these are bought from other people.

Many merchants do not go much into that field. For example, bowling shoes are sold largely in the bowling alleys today rather than through retailers, although retailers try to get some of them.

The vulcanized rubber sneaker shoes or canvas shoes are found in all family stores. Waterproof footwear is sold in most family shoe stores, and you could add house slippers to that. You could add many of these little shoes that are [fol. 120] made for indoor wear, that are put out by individual manufacturers, that they might want to purchase. Some of them are attached on cards and sold at a very low price: Just like slip-on types of footwear. There are many shoes style-wise in the price ranges and all that Brown would make that he would still feel that he ought to have. If Brown didn't happen to have that same item at that time, which often happens, it would mean other manufacturers' shoes going into those stores.

About the only method they have for determining what a Brown franchise dealer buys outside of Brown lines would be to know pretty much what his retail business is, and then make a guess as to how much of that was Brown's, based on Brown's shipments. The forms Brown receives are categorized as to the type of shoe, and they might not always show whether they were Brown's or the other fellows. The forms indicate that there is a place for Brown's shoes and other shoes, but they don't always report it that way. It is not always a basis on which you could rely. They just don't fill out the form a number of times. They are made out to varying degrees of completeness. As an expert in the shoe marketing field he would not have any opinion or any idea as to what percentage of the total sales of a family type shoe store would be involved in work shoes, waterproof footwear, canvas shoes and slippers not manufactured by Brown. Brown would know how much they bought from Brown compared to what they were doing in total. In other words, they might be doing 60 percent on Brown's shoes, 75 percent, or 85 percent. Brown has an idea to that, based on his total business against what he buys from Brown. But to decide how much of that specifically falls into each category, he doesn't believe Brown has that information. At least, he has never seen it.

The witness testified in the merger case, United States

versus Brown. The statements that he made there are true to the best of his knowledge and information.

Mr. Rogal: Your Honor, in order to shorten the interrogation of Mr. Fleener, it was agreed between counsel that part of his testimony in the U. S. versus Brown case would [fol. 121] be stipulated into evidence. This is not his complete testimony; just part of his testimony. And it has been marked for identification as Exhibits 118-A through 118-Z. I am going to offer this in evidence at this time. I understand that Mr. Burke has a voir dire examination to be made with respect to at least one page of this.

Hearing Examiner Creel: Very well.

Mr. Burke: We have no objection. We understand that if Mr. Fleener were asked the same questions that were propounded to him in the case Mr. Rogal referred to his answers would be the same as recorded in that case, and we have no objection. However, as Mr. Rogal indicated, for completeness, because it does cover some matters that have not been covered in his direct testimony, we may want to ask some questions for clarification.

Hearing Examiner Creel: All right. Do you want to do that now?

Mr. Burke: No, it won't be necessary. We will wait until he concludes because maybe Mr. Rogal will ask the questions and it won't be necessary.

Thereupon Commission's Exhibits 118-A through 118-Z were received in evidence without objection.

#### Cross-examination.

The witness recalls a question asked him about loans to franchise dealers generally, in the testimony that he gave in the merger case (Commission's Exhibits 118-A through 118-Z). He recalls answering the question as to what form that loan took so far as the terms of the loan, that it was a demand note. There are, dates attached to that note as to the terms of payment. That is the basis of the understanding between Brown and the parties who borrowed the money as to the dates on which he is to repay them. So when they call it a demand note, it's not strictly a demand note. Those notes are not called on demand. These loans are made from time to time to independent retailers who are on

the franchise program as well as those who are not. If a [fols. 122-127] person who is on the franchise program and has a loan outstanding goes off the franchise program, this does not affect his loan a bit. The loan is not called. It is paid off based on the original agreement. The original agreement does not provide that the loan be called in the event the franchise is cancelled.

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[fol. 128] J. R. JOHNSTON, called as a witness for the Commission, testified as follows:

Direct examination.

The witness usually signs his name as "Dick" to most of the Brown franchise dealers in correspondence with them, or in the case of Brown field representatives he uses the signature of Dick Johnston, his middle name being Richard. [fol. 129] He is manager of the franchise stores division of Brown Shoe Company. His duties are to employ and supervise capable field representatives who contact independent retailers who operate their business on what is known as the Brown franchise stores program, and supervise much of their activities, as well as employ and supervise the activities, of those who are under his supervision in the St. Louis office in the Brown franchise stores division.

His relationship with the brand divisions of Brown, which are called selling divisions, is purely on the basis of consulting with them on any subject that might be relatively important to his division or franchise stores or reviewing their line with them just for his own education as to design and style of line from season to season. He has no control whatsoever over the actions of any of those divisions. As to whether the sales manager of those divisions would be considered about on a par with him within the company ranking, it would depend upon your interpretation. His division does not sell merchandise. They sell ideas, so to speak, and those divisions sell merchandise. He doesn't know just how his company would classify situa-

tions like that. He is directly responsible to Lewis J. Schaefer, the vice president in charge of sales.

Tom Curtis is an associate of the witness. He has the title of assistant to the franchise division. He has long been with the witness. Tom Curtis has been in his present position approximately 6 years and prior to that, many years with Brown in a different capacity. His duties are many. Specifically, they would be to draw up and send out periodically to the franchise stores suggested ideas on merchandising, preparation for clearance sales, preparation for peak seasonal periods of the year, regarding the sales staffs of franchise dealers; to correspond with Brown fieldmen, pretty much from an acknowledgment standpoint, as a result of the information that they give the division as a result of a call they make to a dealer periodically. His duties also include assisting their fieldmen with audits and inventories of stores when they make that request of the division. Also working up at the request of dealers, financial guides that would help them in the guidance of their business financially. As to whether he acts for the witness in his absence, depending upon the degree, yes, Curtis acts in his absence. There are some decisions that come up periodically that Curtis would postpone, or if it is necessary to make a decision before the witness might return, consult with his superiors in his absence.

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Lou Carroll is an employee of the franchise stores division in the St. Louis office. Among many of Mr. Carroll's duties the witness mentioned some of the ones that he feels are most important. They vary. Mr. Carroll acknowledges correspondence with the field representatives regarding prospects that they might be working on who are interested in operating their business on the franchise program. He also keeps a record and is charged with the correspondence that involves those stores which use what is known as a window display service that Brown provides franchise dealers who are interested in that service. He is also responsible for keeping abreast with a program such as a store might be being built, a new store, from the standpoint of handling orders that come in for that store, to see that



they are turned over to the various divisions for processing and handling. He makes a sincere effort to see that the divisions process the orders for shipping purposes, and makes an effort to see that its shoes are delivered to the dealer on time for his opening.

There are three men in the office staff of the franchise division, and Mr. Carroll would be third in command. The headquarters staff of the franchise division are the witness, Mr. Curtis and Mr. Carroll. Walter Johnson is general sales manager of the United Men's Division. Bob Lapin is a division credit manager for the company, for the Brown division of Brown Shoe Company. Brown has a number of division credit men and he is one of those. He is not the credit manager of the company. Mr. Lapin handles the credit of the great percentage of Brown franchise dealers.

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[fol. 131] Mr. T. R. Forgan is a field representative in the franchise stores division. He has been in that position approximately 5 years. Robert Taylor is a field representative in the franchise stores division. Max Holt is also a field representative in the franchise stores division.

As to when the Brown franchise division program was started, from what the witness has been told by others who preceded him it was started approximately 1921 or 1922. He has been head of the division for 7 years, since 1953. Before that he was assistant to the division head for one year. He was not with Brown before that. The witness would say there had been basically no material changes in the way the program is operated during the period of time that he has been with the division. The field representative signs the franchise accounts in the first instance.

At this time Commission's Exhibits 22, 23-A through 23-Z-24, 24-A through 24Z-33, and 25-A through 25-C, were offered and received in evidence without objection.

The witness said the function of Commission's Exhibit 25, which is the Brown franchise agreement, is to give the dealer an idea of what he might expect from Brown Shoe Company in the way of our providing him with these systems and services, etc., and also what we, in turn, would ask of the dealer who decides to operate his business on the franchise stores program. The first page of the agreement,

Commission's Exhibit 25-B, are the tangible and intangible [fol. 132] benefits, the services that the retailer might expect from Brown Shoe Company. The second page of the agreement, Commission's Exhibit 25-C, would be what Brown would ask the dealer in return for the tangible and intangible benefits of the services as outlined on 25-B.

The witness' attention was called to the first service listed on the Exhibit, architectural plans. As to what that entails, the witness said they have an architectural department that will completely design a new store or draw plans to remodel an existing store in its entirety for a dealer who might need those services. In some states, however, even when their architectural department provides complete plans, that retailer must refer those plans to some department within his state for approval before he might be permitted to proceed with these architectural plans.

The plans are complete from the ground up and from the sidewalk to the rear door, even to the details of the color schemes that are used on the walls, the carpeting to blend with the paint on the walls, the upholstery on the chairs. Just the complete design and layout of the store, including fixtures as well as the general physical plant of the store. Everything that is submitted to him is purely suggestive. They have many dealers who accept those plans and use them in their entirety because they are pleased with the plan as it is submitted to them. They have other dealers who accept the plan and make some changes, depending upon their personal likes and dislikes as to what has been laid out and suggested by the architectural division. The witness does not know the cost to Brown of drawing up these plans.

The witness has never represented that this service is worth a certain monetary value. Brown franchise stores utilize this service very much. He would have no way of knowing how many of the Brown franchise stores have used it. His only way of making the statement when he said "very much" is that as he visits stores and talks with the dealers, and the discussion comes up about the physical plant, which happens very often, he has the occasion to ask who designed the store. By and large the witness can recognize [fol. 133] the ones that were designed by the Brown people. Most often the architects visit the site and take ac-

tual measurements for a complete remodeling. As to a minor remodeling job, they might be able to do that with photographs that would be sent to them with measurements. But if it is a major remodeling job or a new store, in most all cases it's necessary for them to be right on the scene to take the specific measurements.

He would say that over the years as many as half of the franchise accounts used that service. Brown does give this architectural service to stores outside of the Brown franchise division. The witness knows this by talking with the person who heads up the architectural department in the company, and also by talking with dealers who do not operate on the franchise program who had told him that they received that service from Brown. He would say that 70 to 75 percent of the time of the architectural department is devoted to working on plans for franchise stores. He does not know the cost to Brown of this service.

Item B on the franchise agreement (Exhibit 25) describes the services of a field representative. These services and the contribution he makes to a retailer deal with most every aspect of his business. This witness was shown Stipulation No. 12, paragraph B, on page 5 of Commission's Exhibit 121. As to whether that sufficiently describes the services performed by the field representatives, the witness stated that the only thing he might add to this as a service of the field representative is that he would counsel with a prospective dealer who is considering a location, to assist him in making a survey for that location and review the lease that the landlord might submit to that man as a prospective tenant to give the prospect his opinion regarding any clauses in that lease that he would recommend the prospect go back and discuss with the landlord. That he might be able to get the landlord to maybe reconsider in behalf of that man who is the prospective tenant.

Boiling it down—and it is incorporated in this thing—the field man's services are to observe, analyze and recommend but not to dictate.

[fol. 134] Field representatives are compensated by salary and their expenses. Their remuneration is not keyed to the sales of their stores. By and large each of them has a multi-state territory. There is no specific formula that they must follow, but the witness would say the field representa-

tives will visit the stores in their territory on the average of twice a year. Other stores possibly 4 or 5 times a year depending upon the number of requests that they might get from a dealer to call on them. Depending on the nature of the work it might be necessary for them to make more than an average of two calls per year. There is no number of calls he requires them to make.

The audit mentioned in item No. 5 in the franchise contract (on Commission's Exhibit 25-B) is one of the things that is performed by the Brown franchise fieldman at the dealer's request, and on occasion where there may be a Brown Shoe Company loan involved with certain stores where Brown might request an audit periodically from those stores. As to whether the provision makes it mandatory the witness stated that there are many Brown franchise stores that they have never audited. That provision is not strictly observed.

The field representatives do not generally check inventory on every call. They will check inventories generally when they are either assisting a retailer in making out a seasonal buying and sales plan, or at the end of the year when that dealer requests an inventory and audit. Those are the specific times when he will definitely check inventory.

Field representatives are required to file a field report that is prepared in mimeographed form relative to different phases of the operation, and then they write in, in long hand generally or type it, a report of their observations and analysis and recommendation as a result of the visit that they make to a store. The witness was showed Commission's Exhibit 30-A for identification and identified this as one of the types of forms that they make their report on. As to whether the field representatives perform any of their [fol. 135] services for Brown stores other than Brown franchise stores, the witness would say that that has been done rarely. They will perform certain fieldmen's services to a person who is not presently operating on the program if he is what they consider a prospect for the program and is desirous and considering the program. The fieldman would provide certain services and functions to a limited degree until the dealer would make a decision, because there is certain work that leads up to an established

business going on to the program, on what they call a conversion, that would be necessary for the fieldman to render certain services to that store. Primarily they confine themselves, with just that exception, to the Brown franchise stores.

The witness' attention was called to items C and E on Commission's Exhibit 25-B, which deal with certain merchandising records and accounting systems. The witness was shown Commission's Exhibits 92 through 117 and asked to examine them. These are the items referred to in paragraph C and E on the franchise agreement. These business forms are given to the Brown franchisees free of charge. Brown replenishes them as he uses them. The witness does not know the cost to Brown of this phase of the program. Commission's Exhibits 92 through 105, 106-A and -B and 107 through 117 were received in evidence without objection.

As to how much money they save the average Brown franchisee by supplying these forms to him, to the knowledge of the witness there has never been a study made of that, so any figure that he would use would be purely an estimate. The witness personally never tells a prospective Brown franchisee what he will save by giving him these records. He does not know if possibly some of the fieldmen gave dealers that information. Commission's Exhibits 92 through 117, in his opinion, are the best system they know of for a family shoe store. He would say that it is very complete.

This service is given only to Brown franchise stores from the standpoint of replenishing their needs. But they will furnish other dealers samples of these forms for whatever use they want to make of them. Either broaden them [fol. 136] or shorten them or give them to any possible use that they might want to make of them. Brown does not deny any dealer samples of the forms. But they do not continue to replenish them. In other words one set of these would be provided to others as a model. They are not copyrighted.

The witness' attention was called to items 4 and 5 on the franchise agreement, Commission's Exhibit 25-C. Brown requests that the franchise store file monthly reports and maintain an accounting system, but not all of them send



monthly reports. Failure to send in monthly reports would result in nothing more than to point out the relative importance of them using the system as it is designed. But nothing further than that. Brown has never dropped people from the franchise program for failing to keep reports or to file reports and keep records, for that reason alone. There might have been a combination of reasons, and that might be one of the reasons that is included.

The purpose of the dealer sending Brown a copy of the report is that these reports are periodically analyzed, and they write the dealer on many occasions as they see certain strengths of his business and compliment him on certain phases of his business, or if they see weaknesses that might be cropping up in the business, to point those things out to him and recommend that he try to strengthen his position in certain phases of his operation, whether it be merchandising or finances or whatever the specific case might be. In addition to that, their credit department also sees the monthly report so that they know what the store's liabilities are and what position the store is in financially.

Commission's Exhibit 99 is not the report form. It is what they call their material report. It is a report that helps the retailer know his position, either once each month or twice each month, his unit sales in relation to inventory by classification. This report is not sent in to Brown. It is used, the copy in the store, for the dealer's merchandising and promotional purposes. Possibly at one time, when that report was originally designed, they requested that the stores who use it send a copy of it to Brown, but it rarely if ever got them. He thinks the stores that used them, used [fol. 137] for for their purpose for merchandising and promotional use. It was pointed out that the reverse side states that it should be filled out in duplicate and mailed to the franchise fieldman at once. The witness stated this is not followed. In fact they wish they could get more stores to use that form than are using them. They would be better merchants if some of them used it.

Commission's Exhibit 111 is the monthly report that is prepared at the close of each month as a result of postings that are made to this from the daily postings of the invoice register and daily sales register and other segments of the bookkeeping system. This side of the report deals with dol-



lars. The other side of the report deals with pairs. One of the great advantages of a dealer using this system is that at the close of each month, as he accumulates his information to see what his position is, he has to look only at one sheet of paper to see his total financial picture of his business. And on the other side of that, he reviews his performance for that month and cumulatively in the year to date, and the comparative figures for the preceding year in relation to pairage, and he doesn't have to go to so many different places to accumulate information to see his performance and position. And that's one of the great advantages of this report form, Commission's Exhibit 111. A copy of it is sent to Brown and the dealer keeps the original for his own analytical purposes. It is referred to for credit purposes by the credit department. Commission's Exhibit 111 correlates with the remainder of the accounting system so that if you have maintained the accounting system then you can fill out this report. One is designed to compliment the other.

Commission's Exhibits for Identification 26 and 27-A through 27-D were offered in evidence. The offer of Commission's Exhibit 26 was thereafter withdrawn. Commission's Exhibit 27-A through -D was received in evidence without objection. The witness was asked to read the last paragraph on Exhibit 27-A, which is an interrogatory answer from the *United States v. Brown Shoe Company* [fol. 138] case. He was asked whether he at any time represented that the savings which would accrue to the Brown franchise by using group fire insurance would be approximately 25 percent.

Mr. Burke: Mr. Examiner, I think, in fairness to the witness and in answer to the question, inasmuch as he hasn't seen this document, it covers a period, by its own statement at the top of the page, of November 1, 1949, to October 31, 1955. I believe that's what the answers are directed to in here.

Hearing Examiner Creel: All right. Go ahead.

The witness stated that he has known there would be a saving to the retailer. However, as it was explained to him, the cost of insurance in a particular town, or the rate, depends upon the type of building that the store is going to occupy or its distance from a firehouse or this or that.

Their dealers' rates or costs are not the same. So he has never been in a position to know what degree of savings it amounted to for one dealer and for another dealer, simply because the premium is established by the age and all of that building, and the handling of that insurance is handled through an agent. It is not handled through Brown Shoe Company. The Brown franchisees save money by using this group program, but the witness doesn't know how much. He has not represented that it would save any specific percent, he merely said that there would be a considerable savings. The rate in one city is different than the rate in another city, depending upon the local situation.

With respect to the group life insurance, he has said that in his opinion that is lower cost group insurance than any other group insurance that he knows of. The insurance he has been talking about prior to this last answer referred to fire and extended coverage insurance, and business interruption insurance. The witness says what he does about life insurance because he did know what the rate was there, but he didn't know what the rate was on the fire and extended coverage type at the local level. He did not know what the percentage savings is on the group over any other group on anything he would be able to get. It was merely his opinion.

[fol. 139] The witness has no knowledge of any type of contract between Brown and the insurance companies concerning this program. Capen and Company in St. Louis is the local agent, and a Mr. Oden Prowell is the gentleman that handles the coverage that the dealer requests, whether it be only fire and extended coverage or in addition to that, public liability or business interruption insurance. It depends on the coverage that the dealer requests. As to who sells it to the man on the spot, it's all done by correspondence.

When a dealer decides to operate his business on the franchise program, prior to the store opening the field representative lets the dealer know that this insurance is available through Capen and Company in St. Louis. Then either the field representative or the dealer will write Capen and Company, and they will write the dealer and explain. They will determine the local rate. And then the actual cost of insurance—the premium that is—is based on the man's average monthly inventory and the valuation of

his leasehold improvements and fixtures. That's why on the monthly report you see a space that is provided for insurance purposes. Then at the end of the first year's operations the average of his 12 months inventory is taken, and then the premium is established based on his average inventory. Brown supplies that average inventory to the insurance company. There is some compensation to Brown for its services. It covers clerical expense—to what extent dollar wise—he doesn't recall. He has seen the figures.

As to how the dealer is told how that rate compares with the rate he would get from a local insurance man, the witness stated that the agent or the field representative, and himself when the occasion arises, tell the dealer that there will be considerable savings. To arrive at the exact saving that is involved, you have to wait until the end of the first year to determine what his average inventory was. He would know what it was per thousand before the end of the year. That could be determined at the time he takes out his insurance. As the witness recalls the rate that is quoted to that man is exactly the same as the rate a local agent would [fol. 140] quote him. But then the savings depends upon the valuation of his fixtures and leasehold and how much his inventory fluctuates. That determines what the savings would be because of him working on a program where there is a group of dealers, and he wouldn't enjoy the same saving locally because the agent is only working with one account locally. The rate is exactly the same as he would be quoted locally.

The insurance premium for a year's period is remitted in advance. He is given a rebate at the end of the year. It is adjusted to an estimated premium for the following year, and the estimated premium for the next year would be based on what his actual inventory was this year. The second year on the plan he would remit in full again at the local rates and then be rebated at the end of that year. It works very much like a mutual type insurance company to the witness' knowledge. The fire and extended coverage insurance policies are renewable every 3 years. It's a three year policy.

If a dealer leaves a franchise program he is advised in writing at least 30 days prior to any cancelling of his insurance so that he can make provisions locally to cover him-

self. If for some reason there is a slip up locally with the dealer and he forgets to do it during that period he will not be just arbitrarily cancelled out. He is given every opportunity to renew that insurance. And at the end of 30 days it is not cut off. It is a 3 year contract, but in the event he leaves the contract is cancellable. And if he does leave the program for any reason at all it has been the practice for his insurance to be cancelled upon 30 days notice, and that same applies to the group life insurance. Now they can of course convert that insurance that they are carrying with Capen and Company with an agent at the local level. So it's not a matter of leaving the store without any insurance coverage.

Item 3 on the franchise agreement, Commission's Exhibit 25-C, requires the store to carry full insurance on the stock and fixtures. The purpose of that requirement is: No. 1, it's good business for any retailer to carry insurance on his stock and fixtures; and, No. 2, the witness is sure that their [fol. 141] credit department prefers to do business with people who carry insurance on their stock, so that if anything happens that causes the business to be consumed by fire or other disasters, Brown has a reasonably good chance of collecting the money that that dealer might owe them. He is sure that other manufacturers would like to have any money that is owing them. That is the reason they request that the dealer carry full insurance on stock and fixtures: No. 1, it is for his own protection, and No. 2 for the people that he is doing business with. As to why it is preferred that the insurance be carried through Brown, the witness really can't give any good reason why the word "preferably" is there. It says if insurance is purchased locally that Brown will be notified. This is so that they will know that the man does have insurance coverage for the reasons mentioned just a few moments ago, for his own protection and for the protection of his suppliers who are furnishing him with merchandise.

Brown's credit terms are 5 percent, 30 days on women's and children's shoes, and 2 percent, 30 days on men's shoes. That discount is the same to a franchise dealer as any other dealer, large or small, that Brown does business with. There are no long term credit terms to his knowledge. That would be in the form of a loan that they might make to

some dealer. But as far as credit terms, they are the same to anyone, to his knowledge. Five percent discount on women's and children's shoes is customary in the trade, by the greatest percentage of women's and children's shoe manufacturers. There are some who do not have those terms. The same is true with regard to the 2 percent discount on men's shoes.

With respect to the purchase of rubber footwear an 8 percent discount on seasonal (dating) orders of 480 pairs or more is customary throughout the trade. That goes to every dealer, franchise dealer or non-franchise dealer.

. . . . .

Brown's arrangements with United States Rubber Company for the purchase of rubber footwear by Brown franchise dealers are outlined in documents like Commission's Exhibit 120 A-C for identification, entitled "Waterproof [fol. 142] Footwear 1958 Season." Another document entitled "U. S. Keds 1958-59 Season" was marked Commission's Exhibit 122 A-C for identification. Commission's Exhibits 120 A-C and 122 A-C were received in evidence without objection.

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March 17, 1960

The following documents on the letterhead of United States Rubber Company were received in evidence without objection.

Commission's Exhibit 123 A-B, entitled "Waterproof Footwear 1955 Season."

Commission's Exhibit 124 E-B, entitled "Waterproof Footwear 1956 Season."

Commission's Exhibit 125 A-C, entitled "Waterproof Footwear 1957 Season."

Commission's Exhibit 126 E-C, entitled "Waterproof Footwear 1958 Season."

Commission's Exhibit 127 T-C, entitled "Waterproof Footwear 1958 Season."

Commission's Exhibit 128 T-B, entitled "U. S. Keds 1955-56 Season."

Commission's Exhibit 129 T-C, entitled "U. S. Keds 1957-58 Season."

United States Rubber Company letters for U. S. Keds 1959-60 Season and Waterproof Footwear 1960 Season are already in evidence as Commission's Exhibits 121, Appendix C and Appendix H respectively.

J. R. Johnston resumed the stand for the Commission.

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With respect to waterproof footwear, the witness does not know what the minimum purchase requirement of United States Rubber Company was for Brown's dealers who were not franchise holders. He did represent, at least up until 1958 or 1959, that a Brown franchisee would receive something additional. He was acting on U. S. Rubber Company's assurances to him. He personally does not know [fol. 143] what U. S. Rubber Company was charging its other customers.

. . . . .

Briefly restating the situation for waterproof footwear, at least for the past 3 years, up until 1959 the Brown franchisee received 8 percent on a dating order for 144 pairs or over, rather than 480 pairs. That was discontinued effective with the 1959 season. As to fill-in orders, he received an 8 percent discount on fill-in orders if his original order qualified him for the factory 8 percent make-up discount. He receives that at this time. It appears that provision for fill-in orders was in effect back in 1955 and has been continued up until the present time. During the years prior to 1959, the Brown franchisee would receive an 8 percent discount on his dating order for buying 144 pairs rather than 480. He, therefore, qualified by buying 144 pairs. That would have constituted qualification to receive the 8 percent on fill-in orders. That is the way the witness interprets it.

With respect to the U. S. Keds line, Commission's Exhibit 27-C, which was the Brown Company's answer to the Justice Department's interrogatories, states that on fill-in orders, if bought in 12-pair run, and if the merchant ordered at least 480 pairs on advance orders, he would re-



ceive a discount of 8 percent. That program has not been changed since 1955. The witness thinks on Keds that is still in effect. According to the answer to the interrogatory, U. S. Rubber Company (Tr. 235) represented to Brown, and Brown represented to its Brown franchisees, that this was an "additional discount." Again the witness' answer would be, with respect to other customers of U. S. Rubber Company, that he doesn't know, in truth, what the prices paid by their other customers are. He knows just what they represent to him. And whether U. S. Rubber Company offered that to other dealers for competitive reasons or for any reason, he does not know. The Keds discount is still in force today, the 8 percent on fill-in orders if the original order qualified, as far as the witness knows.

So far as Brown Shoe Company is concerned, the witness thinks this U. S. Rubber Company program is confined to Brown franchise stores. If they have this arrangement with [fol. 144] any other group of retailers he is not aware of it. As to any of the Wohl plan stores, the witness doesn't think Brown receives a commission on their purchases. He thinks it was discussed, but does not think Wohl Shoe Company got any discount other than the usual discount to any average dealer. To verify that, it would be best to check with the Wohl Shoe Company. He doesn't know.

. . . . .

At this time Commission's Exhibits 28-A through M and 29-A through L were offered and received in evidence without objection.

The witness' attention was called to Commission's Exhibit 25, specifically 25-C, paragraph 1, the words "lines conflicting with Brown division brands of the Brown Shoe Company." In practice, he interprets this phrase as meaning general lines that have the breadth and depth and selection of pattern and type and heel height and comparable price. That's a broad explanation of it. In other words it would be a shoe that would be similar to a Brown shoe in quality, construction and appearance. And the length and depth of the line would be various types of shoes with classifications like casuals and flats and walking shoes and dress shoes. That's a broad conflicting line. Now there are other lines that don't have the broadness and representation that

some other lines do. A "line" is a group of shoes that a salesman carries under one brand name. That would be confined in gender to one sex—women's shoes, men's shoes and children's shoes.

Fiancess is a conflicting line. So is Town and Country. Fiancess is considered a high-fashion line of women's low, medium and high-heeled shoes. Town and Country is just a little broader line than Fiancess. Town and Country includes high-heeled women's fashion shoes, medium-heeled women's fashion shoes. What is known in the trade as flats and casuals. American Girl would be a conflicting line. That is pretty much the same as a Town and Country type of shoes. The high-heeled dress shoes, the medium-heel dress shoes and the casuals and flats. He thinks American Girl is [fol. 145] the firm name of the company located in New England that manufactures those shoes, but he is not sure.

At this time Commission's Exhibits 83-A and B and 84-A through -I were offered and received in evidence without objection.

Heydays would be considered a conflicting line pricewise, but not from a construction point of view. As the term is used under paragraph 1 of the franchise, the witness considers them a conflicting line. They are women's shoes. It is a very short line. As he remembers the line, it is confined to low-heel types. He thinks Show Offs are conflicting by type, but he is not positive of the price range that they fall into, so he doesn't recall whether they would consider them conflicting from a price standpoint or not. There are men's Shelby shoes and ladies' Shelby shoes. They do not consider either the Shelby Arch Preserver, which is the ladies' shoe, nor the men's the Arch Preserver shoe made by E. T. Wright, conflicting because they are higher priced lines.

The witness does not recall the manufacturer of Citations brand of shoes. They would be considered a conflicting line of shoes. They are pretty much a women's heeled fashion line of shoes. He is familiar with the Grinnell line. They would be a conflicting line in their types of shoes. To the witness' last recollection, not having seen the line, they are women's and girl's sport shoe line. The witness agrees they are casuals, dress flats and sports and things like that. He remembers them basically as a sport shoe line. He is slightly familiar with Golo brand. They consider Golos con-

flicting in their sports shoes. That is a women's shoe again. Velvet Step would be a conflicting line. They are made by International Shoe Company. It's a woman's shoe, basically considered a fashion and conservative, both fashion and conservative types of women's shoes.

Heydeys would conflict with either the Air Step or Naturalizer line price-wise. Citations would conflict with Life Stride or Risque lines. Grinnell would conflict with Glamour Deb line and certain categories of the Risque and Life Stride lines. Golo would do the same as the Grinnell [fol. 146] line. Velvet Step would conflict with Life Stride and Risque and some of their shoes would also conflict with the Smartaire line. The Williams line is not a conflicting line. To the witness' knowledge they make only low priced women's casuals and flats, plus a small collection of women's heeled shoes as they are interpreted in the trade. They are priced below any of the Brown brands.

Lazy Bones would be considered a conflicting line. That is a children's brand name and the line is a service type of children's shoes. He doesn't think they manufacture dressy, patent leather, dainty types of shoes. It is what is considered in the trade as "compo" construction. They are pretty much shoes for school and shoes of the more rugged type. The witness is familiar with the term Lazy Bones Seniors and Juniors. Lazy Bones Seniors, as he recalls their size, run above misses' size 3, and those shoes would be worn by girls and boys that wear above a size 3. They are a conflicting line in their entirety.

Q. With respect to paragraph 1 of Exhibit 25-C and its interpretation, do you make any distinction between the Brown franchisees who have signed one of these contracts and those who have not signed the contract?

A. No, sir.

Q. Would that be true of the provisions of the Brown franchise program as a whole? In other words, the services that a man can get and the requirements and obligations that he is supposed to live up to.

A. Yes, that is correct. There would be no variation of service or items whether he signed the agreement or not.

Mr. Rogal: Your Honor, at this time I should like to offer as a group Commission's Exhibits 30-A through 51. These exhibits are of two types. They are either reports by

the Brown franchise fieldmen or they are letters or memorandums exchanged between personnel of the Brown franchise division in some cases with Brown franchisees or stores but generally among the fieldmen and officers of the franchise division. Commission's Exhibits 30-A and -B, 31-A and -B, 32, 33, 34-A and -B, 35-A and -B, 36, 37-A and [fol. 147] -B, 38-A and -B, 39-A and -B, 40, 41-A and -B, 42, 43-A and -B, 44-A and -B, 45, 46, 47, 48-A and -B, 49, 50-A and -B, and 51, were received in evidence without objection.

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The witness was handed Commission's Exhibit 119 for identification and also Commission's Exhibit 121, Appendix I. These documents together list the commissions paid Brown by U. S. Rubber on rubber footwear. The witness doesn't know for what period of time the commission arrangements in Exhibit 119 were in effect. However, he does recall that the commissions indicated on Exhibit 121 became effective as stipulated. They supplant the commission percentages on Exhibit 119. In other words they were changed from Commission's Exhibit 119 to the Commission's Exhibit 121. He does not know how long the commissions on Exhibit 119 were in effect, prior to their being changed in 1959. He would have to say several years. He [fol. 148] wouldn't know just what period of time was involved. Commission's Exhibit 119 was received in evidence without objection.

By agreement of counsel for both parties, cross-examination of Mr. Johnston was reserved until the first day of the next hearing.

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W. L. H. GRIFFIN, called as a witness for the Commission, testified as follows:

Direct examination.

He is Secretary of Brown Shoe Company and Secretary of several of the subsidiaries, including Regal Shoe Company, Wohl Shoe Company, and of some of the separately incorporated Wohl Shoe Companies, such as Wohl Shoe Company of Miami, or of another town, which are adminis-

tered by Wohl. They are all considered as Wohl although they are separate corporations. He is Secretary of Weath-erby-Keyser. It is a West Coast operation of Wohl. It is really Wohl's retail operation in California. They are leased departments and stores. It's just separately incorporated.

The witness attends the Board meetings of Wohl Shoe Company. Milton Frank normally presides at those meetings. On occasion the Chairman of the Board presides, but it's primarily Mr. Frank. The Board of Directors of Wohl is responsible to the stockholders. Wohl has no stockholders independent of Brown. Brown Shoe Company is its stockholder. The management of Brown appoints the directors of Wohl Shoe Company with the advice of Mr. Frank who is President of Wohl. The witness is a member of the Board of Directors of Wohl.

The witness does not recall a stipulation in *United States v. Brown Shoe Company* that there were consultations between the officers of Wohl and the officers of Brown on policy matters. There is consultation between officers of Wohl and officers of Brown. There are some common directors and common officers of the two companies. This is covered in a stipulation in the present case. (Commission's Ex-[fol. 149] hibit 121) It covers the officers. He doesn't know whether it covers the directors. There are some common directors. The witness is not a director of Brown but he is of Wohl. Mr. Serth is a director of Wohl and not of Brown. The other three directors are common.

The witness was shown a document that counsel for the Commission had referred to as a stipulation. It is not a stipulation. It contains "Certain facts admitted by defendant in response to plaintiff's request under the federal rules of civil procedure." His attention was directed to No. 15. The witness stated that he remembered that. The witness read the following statement:

"Milton Frank, President of Wohl, is also a Vice President of Brown and meets with said officers and directors of Brown from time to time to discuss policies."

He was asked at what level of policy would be discussed, and when do you get to a high enough plane so that Mr. Frank discusses the policy of Wohl with the officers of

Brown. The witness said Mr. Frank, as President of Wohl, is charged with the efficient and profitable operation of Wohl and its associated corporation. He will discuss major policy matters with Brown management and report on progress. But as to the day to day operation, or what shoes will be bought and sold or lease negotiated for, that would not be discussed. It would be reported usually after the fact. It wouldn't be the day to day operation, but it would be matters of major policy.

The witness was asked what a Wohl plan account is.

Mr. Burke: Mr. Examiner, I object to the relevancy of this line of questioning. It doesn't seem to have any materiality or relevancy to the issues in this proceeding as directed to Wohl. I recognize that that's the same type of objection I made before in regard to information as to Wohl.

Hearing Examiner Creel: Yes.

Mr. Burke: But I still feel that way.

Hearing Examiner Creel: The objection will be overruled. You may answer.

[fol. 150] Mr. Burke: May I have a continuing objection to this line of questioning, sir?

Hearing Examiner Creel: Yes, sir.

The witness would like to qualify this to say that he is not connected with Wohl's day to day operation. He is Secretary of the corporation. He handles the minutes and attests to what goes on. He is not familiar with the day to day operation. He is generally familiar with what a Wohl plan account is or was at one time, but he just is not connected with Wohl's wholesale operation today, except he knows the people who operate it and he is generally familiar.

A Wohl plan account is a wholesale account of Wohl, a retailer, who buys women's shoes, which are all Wohl sells at wholesale, from Wohl, and generally Wohl planners will buy most of their women's shoes from Wohl. A Wohl plan account has no relation to leased department. A Wohl leased department is owned by Wohl; that is, its own employees in a leased department. Not all of Wohl's retail customers are Wohl plan accounts.



As to what distinguishes a Wohl plan account from the other retail customers of Wohl, one would probably be the number of Wohl shoes that they would purchase. The fact that they are mostly small leased departments owned and run by an independent retailer, who makes form reports to Wohl and Wohl advises him on his merchandising. He doesn't know, of his own knowledge, whether a Wohl planner can carry conflicting lines and remain a Wohl planner. They are generally small departments, leased retail departments, as opposed to being shoe stores, and normally new in business.

Wohl's leased outlets are its primary retail operation. They will have a manager, and he will have salesmen, and they will take a lease to sell shoes in somebody else's store, in a department store. They are sold in the name of the store, under the sales slips of the store, advertising in the store's big ad, which may include dresses or something else. And their operation, like many other leased departments of stores, is an integral part of a department store, the policy.

[fol. 151] Wohl leases some stores. It will have a real estate lease as opposed to a lease arrangement with a department store. They lease a store building or a portion of a store building in which to operate what they refer to as an individual shoe store. Wohl owns no real estate of that kind. It is all leased. The total of 457 leased departments in 243 stores would include all of Wohl's controlled outlets, operated by their own employees. It was pointed out in the stipulation that that figure includes both leased departments and individual shoe stores. Wohl also sells shoes to other independent retailers. That program is no different from just a simple customer-seller relationship.

. . . . .

In Wohl's leased departments they may sell some Brown brands. Wohl has its own brand names, its own registered trademark, registered in the name of Wohl Shoe Company, and those are also sold in their retail departments. In their wholesale division, where they have salesmen calling on the trade, they sell only Wohl brands.

The witness doesn't know whether a Wohl planner would stock any of the Brown brands. He is familiar only in a very general way with Brown's agreement with the insur-

ance companies which underwrite the insurance for the Brown franchise dealers.

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[fol. 152] Cross-examination.

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Mr. Burke: I have no further questions.

I would like to move at this time that all testimony of Mr. Griffin with respect to Wohl be stricken from the record for the same reasons I objected to the original testimony.

Hearing Examiner Creel: The motion is denied.

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CHARLES N. AREND, called as a witness for the Commission, testified as follows:

Direct examination.

Mr. Arend is Vice President in charge of sales for the Juvenile Shoe Corporation of America. He has been subpoenaed to appear here. His duties are to direct the sales of their company and also look after their advertising. The main office is Aurora, Missouri. They maintain a sales office in St. Louis.

[fol. 153] The witness started with Juvenile in the Aurora office in 1933, some 27 years ago. He was there for approximately 4 years, doing general office duties, and the last position he held there was specification and construction details. He was then transferred to the St. Louis office to go into the sales department. He spent about one year in their sales office, sales training program, and then went out into a territory consisting of Missouri, Arkansas and Kansas, at which time he traveled until he was drafted into the Army in World War II in 1942. After his discharge from the Army in 1945 he was given a territory consisting of Indiana, Ohio and Michigan, which he covered until early 1947, at which time he came into the present job, which he now has. He has been the Sales Manager since 1947.

His company is a member of the National Shoe Manufacturers Association. The President of his company, Mr. Pate, represents the company in that organization. He has on occasion attended their clinics and workshops and that part of the meeting. In his job as sales manager, the witness makes trips throughout the country, contacting the salesmen and their customers and discusses industry conditions with them.

He attempts to spend as much time as possible each season in the territory with the men, especially some territories more than others, but as time permits. How often he makes these trips is a hard question to give any definite answer on. Some seasons he is able to spend a good deal more time than others. Unfortunately, this past season, he hasn't spent as much time as he would like. But his job does call for extensive traveling throughout the country.

The witness attends shoe shows. He will usually attend probably 4 to 6 each year in various sections of the country. He has been appointed General Chairman of the 1960 St. Louis Shoe Show, which has been designated the Shoe Market of America this year. At that show will be a broad representation of all types of shoe manufactured. There will not be the majority of manufacturers, because the physical set-up would not permit that many to be in attendance, however, all phases of the industry will be represented. The witness keeps informed on industry conditions [fol. 154] by reading various papers and publications. He reads the Footwear News, Boot and Shoe Recorder, The Coast Shoe Reporter and The American Shoe Making. It is necessary in the performance of his duties to keep informed on industry conditions.

His company is a corporation. The principal officers of the company are C. F. Reith, Chairman of the Board; Mr. Gale Pate, Sr., President; Mr. Don Heiston, Vice President in Charge of Production, and the witness is Vice President of Sales. His company is in the top 70 in the industry, based on sales volume. They have 3 manufacturing plants: Two are in Aurora, Missouri, and one is in Sarcoxie. They have approximately 600 employees.

The company has two nationally advertised brands on which they have national distribution. One line is the Lazy Bones line and the other is Clinic. Lazy Bones is their line

of children's shoes, infants, children's and misses'. They also go up into growing girls' and what are known as women's shoes and youth sizes. Clinic shoes are professional shoes for nurses, technicians, waitresses, beauticians, etc. On both lines they have national distribution in all the 50 states, as well as some foreign countries. Generally speaking, the retail prices on Lazy Bones shoes are from \$5.95 or thereabouts in the infant size range up to \$9.95 in their growing girls' sizes. The retail price range for Clinic shoes is \$8.95 to \$12.95 or thereabouts. For their own personal records within the company they refer to the Lazy Bones shoes for infants, children's and misses as Lazy Bones Jrs., and the growing girls and youth sizes as Seniors. But there is no designation as such in their advertising.

Their shoes are distributed through retail shoe stores and department stores. They do not sell them to a wholesaler, they sell directly to the retail shoe store and the department store. They use 13 salesman, who cover the entire United States, including Alaska and Hawaii. All salesmen carry the entire line and travel exclusively for the Juvenile Shoe Corporation. The company gives cash discounts. Their terms are 5 percent 15 days, 2 percent 30 [fol. 155] days, net 31 days. They have a nationwide distribution. The greatest number of accounts they sell are in the small towns of 5,000 to 30,000 population.

Q. Generally speaking, in these small towns as I have defined them how many suitable shoe outlets are available to you?

Mr. Burke. I object to the form of the question. It is vague, ambiguous, and calls for a conclusion on the part of the witness.

Hearing Examiner Creel: Well, of course, the number is bound to vary in different towns, but I will overrule the objection and let him answer it.

A. That is a question that you couldn't make a definite statement on. It certainly does vary. I would say in towns of—you said 5,000 to 30,000?

By Mr. Timony:

Q. Yes.

A. I would say possibly from one to four that we would

regard as desirable, potential customers, taking into consideration credit rating, etc.

Q. Do you know what the Brown Franchise Plan is?

A. I have never seen a Brown Franchise Plan agreement. It has been reported to me——

Mr. Burke: I object to this testimony. It is obviously based on hearsay from the witness's own statement.

Hearing Examiner Creel: Yes, it is hearsay. But counsel has gone to a lot of trouble to establish this gentleman as a shoe expert. I would like to hear from him.

Mr. Burke: I beg to differ. He doesn't qualify as a shoe expert any more than he has just described what seems to be the normal duties of a vice president of corporation who looks after their own particular self-interests and happens to be in the shoe business. He is hardly a shoe expert.

Hearing Examiner Creel: Well, we needn't argue about it. What I mean by a shoe expert is from the marketing end. [fol. 156] But I would like to hear from you Mr. Timony.

Mr. Timony: Mr. Arend has testified that he is in a position in his company where he would receive reports from salesmen as to the competition that they are running into. I think that in their reports they would have to define what their competition is and how it is defeating the sales of Juvenile.

Hearing Examiner Creel: I think this: I think he can testify as to what his salesmen have reported to him, yes. If he were just repeating something that he had heard by chance, of course, that's a different thing. But if you confine your answer, Mr. Arend, to the information you have received as a part of the regular reports that your salesmen send to you, then you may answer. And I will overrule the objection.

Mr. Burke: May I have a continuing objection to this line of interrogation?

Hearing Examiner Creel: Yes, sir, you may.

A. We require each of our salesmen to submit a daily return report, listing the accounts that they call on. And from these reports and from semi-annual discussions during our sales meetings with our salesmen they have pointed out to me incidents where volume has declined with certain accounts; that this has been brought about by the

fact that certain accounts have gone on the Brown Franchise Plan.

Mr. Burke: Mr. Examiner, I object to the testimony and move that it be stricken. The reports are the best evidence. Apparently there are written reports.

Hearing Examiner Creel: Some of them are written and some of them are not. Motion is denied.

By Mr. Timony:

Q. Are these reports written?

A. Yes. We keep those reports for about a year or a year and a half and then they are discarded.

Mr. Burke: I suggest all testimony of this witness be limited as to identifying the reports and then submit the re-[fol. 157] ports so that we may have the privilege of examining them.

Mr. Timony: I think the question that I asked that we are now talking about is just what he knows to have been the franchise plan. He would have accumulated this knowledge over the last 12 or 13 years certainly from these reports of salesmen; from the general knowledge that he gains by his position where he has to—

Hearing Examiner Creel: I think so. I don't think it is incumbent upon him to furnish these reports because, as he has said, a great many of them have been destroyed. But I will bear it in mind and see where we get with this testimony. Thus far we haven't gotten anywhere yet. Go ahead with your examination.

By Mr. Timony:

Q. Would you please describe what you think the Brown franchise plan is?

Mr. Burke: Well, I object to the form of the question. The question calls for a conclusion of some kind and obviously based on hearsay because he doesn't know—

Hearing Examiner Creel: I think so. Objection sustained.

By Mr. Timony:

Q. Have you ever talked to Brown franchise dealers?

A. Yes, I have.



Q. What about?

A. In most instances about——

Mr. Burke: Can you fix a time?

A. ——about our line in regard to Brown lines that have replaced some of the lines they formerly bought from us.

Q. And in these discussions you have talked about the merchandising methods of the Brown franchise plan?

Mr. Burke: Mr. Examiner, so that we may have a record here, and also so that we may have some way of determining whether these questions and answers are pertinent to [fol. 158] the issue at hand, I think it would be helpful to have the time and place and with whom.

Hearing Examiner Creel: Yes, I think so. I think the first thing that you should estimate for us, if you can, is the number of such accounts that you have talked to. Can you give us a rough estimate as to how many?

The Witness: That's pretty hard.

Hearing Examiner Creel: As many as 50?

The Witness: I wouldn't say so.

Hearing Examiner Creel: Half that many?

The Witness: Oh, I would say—to make it safe, I would say 10.

Hearing Examiner Creel: And over what period of time?

The Witness: Over a period of 5 years.

Hearing Examiner Creel: Can you give us the names and locations of some of these people?

The Witness: Well, one is Jim Houck, of the Fisher Shoe Store, at Plymouth, Mich. I have talked to Morris Kay of the U. S. Stores in Fort Wayne, Ind. I have talked to Dick White of Floyd & White's Shoe Store at Blytheville, Ark.

Hearing Examiner Creel: Well, maybe that's enough for this purpose at this time. Go ahead, Mr. Timony.

His salesmen have also made reports to him concerning this Brown franchise plan in the matter of explaining, as an example, why they had not sold an account when they called on him, or explaining why the volume of that account had been declining. They now sell to Brown franchise dealers. They sell very few of their Lazy Bones Shoes. They sell primarily their Clinic shoes. The general trend in any

case where a dealer goes on to the Brown franchise operation is that there is a very definite and sudden drop in their Lazy Bones volume. For some reason unbeknownst to him the Clinic volume seems to go on usually about the same.

[fol. 159] They have sold retailers who were formerly independent who are now on the Brown franchise plan. As to how he knows they are now on the franchise plan, some of these incidents are reported on the daily return reports he receives from his salesmen. He knows of some personally. At their semi-annual sales meeting there is time set aside for individual conferences with their salesmen in order to go over their accounts. At this time they go over carefully with them their accounts and discuss the progress or decline of various accounts and what might be responsible for these accounts that are declining in volume and what corrective measures they may take. At these discussions he is told by the salesmen of any accounts who have gone on the plan which they feel has caused a decline in their volume.

Mr. Burke: Mr. Examiner, I move that the testimony in response to that question be stricken. It is based on hearsay, discussions. It obviously is vague and indefinite as to times and places; people generally discussing with Mr. Arend matters that they thought were their opinions, opinions of other people. And it's now become Mr. Arend's report on such hearsay testimony. I believe it's objectionable.

Hearing Examiner Creel: Motion denied.

The witness has to a certain extent, conducted an investigation of their files concerning sales to customers who are now on the Brown franchise plan. He has here a few of their accounts which he is certain are Brown franchise accounts. Listing first, the firm name and address, and the next column is the year and the number of pairs that they purchased in those various years in the various categories such as Lazy Bones Juniors, Lazy Bones Seniors, Clinic, and then the total. He has 12 shoe stores listed there. These are not all of the Brown franchisees to whom they now sell. These are the ones that he is sure in his own mind, either that he knows about personally through discussions with their salesmen that have gone on the plan, or incidents where at some time or another the salesmen have reported

to him on their reports that the account has gone on the plan.

[fol. 160] The witness was requested to pick 10 or 12 examples, and that's what he has done. He picked the ones that he was confident were on the store plan. It took him probably a day and a half to conduct that investigation. After they picked these out he wanted to check to verify the records with the general office to be sure that it agreed with their sales figures from their permanent records. It took probably a half hour or so to pick out the 12 stores. The foregoing list was offered in evidence as Commission's Exhibit 138-A and 138-B. The exhibit was prepared from the books and records of Juvenile. The witness personally made the exhibit, Commission's Exhibit 138-A and 138-B was received in evidence without objection.

Juvenile has sold shoes to the Fisher Shoe Store at Plymouth, Michigan, and sells shoes to them now. Juvenile sold Lazy Bones Juniors to Fisher Shoe Store in 1952, but have not sold any Lazy Bones Juniors to Fisher since 1952. As to the reason for that, the witness said, Jim Houck, the owner or part owner of the Fisher Shoe Store, is a personal friend of mine, whom I have known for a number of years. And it was at a shoe show in 1953—I believe right here in St. Louis—that Jim Houck came into our sample room and pointed out to me that he would no longer be able to use our Lazy Bones shoes. When I asked Jim why, he told me that he had gone on the Brown franchise plan, and, with the help of the Brown Shoe Company, or words to that effect, he was opening a second store. And on this basis he would be no longer able to use our Lazy Bones Juniors shoes. After 1952 Mr. Houck had two stores, both of which were Brown franchise stores.

The witness was asked whether he checked with his company to see if there was any recorded reason why the other 11 stores on Commission's Exhibit No. 138 dropped or decreased their purchases of the Juvenile line. He said, those customers on this list were submitted to our general office, and that at my request they checked to see if there were any problems credit-wise or from the standpoint of excessive return goods, which would indicate a complaint on our shoes or for any reason from neglect in any way on our part

[fol. 161] which would cause the volume of any of these accounts to decline. And I was informed that no such cases existed on the accounts on this list. As to whether, in cities involving these accounts where volume has declined, Juvenile has found additional accounts to replace the volume lost, the witness said, in two towns on that list we have sold additional accounts, but today's combined total of both accounts, in both instances, does not equal the total or the volume of those two accounts originally before they went on the Brown store plan.

He feels reasonably sure there are other stores they sell to today, that are Brown franchisees which have either stopped buying or significantly curtailed purchases from them, besides those set out in Commission's Exhibit No. 138. These are accounts that he felt confident in his own mind, after a discussion with his salesmen from their reports, were on the Brown plan, and he held the list to this number since he was only asked for 10 or 12, and he wanted to make certain that he had those that were really Brown franchise stores.

His company is having difficulty in finding outlets in small towns from 5,000 to 30,000 population today. It's becoming increasingly more difficult in smaller communities to find desirable outlets, taking into consideration the types of stores, credit rating, and many other points that have to be considered in selling an account. Quite a vast difference now than back in the late 30's when he was on the road traveling. He has been in several towns where maybe he hasn't visited for 5 years or so, and has seen quite a decline in the number of firms that could be considered potential customers. There are a number of retailers today, who at one time were independent, who are on franchise or possibly have leased or sold their business to shoe manufacturers. In some instances there has been a decrease in the number of shoe selling stores in these small towns. As our highways and automobiles become better, some of your smaller towns naturally are not as good as they were possibly 10 or 15 years ago. But there are still a great number of people in those communities that still shop in their home town.

[fol. 162] The witness was asked from his experience in the industry and from the reports of his salesmen, from the knowledge gained in this way, whether he has difficulty in selling to stores who are on the Brown franchise plan.

Mr. Burke: I object to the form of the question. It calls for speculation and I presume a good deal of hearsay and this witness's own personal opinion, based on what might obviously be coming from the lips of a competitor who has certain preconceived notions on this.

Hearing Examiner Creel: Well, I will sustain the objection. But I do believe that he has already testified and specifically to that effect. And this exhibit presumably—I haven't seen it, but I presume, from what he said about it, that it shows a falling off in volume to these 12 accounts that he has named.

Mr. Timony: There are customers he had formerly who might, or might not, have been on the franchise plan but who are now on the franchise plan. And I was trying to elicit by this question that he had difficulty getting into a store which is on the franchise plan.

I think Commission's Exhibit 138 shows that once he has a customer who switches to the franchise plan that then this customer will stock or significantly reduce his purchase from Juvenile. This question was intended to show that he also had difficulty in obtaining an outlet which is on the Brown franchise plan.

Hearing Examiner Creel: Have you had any difficulty in getting into any particular Brown franchise account?

The Witness: We don't make a general practice to attempt to sell Brown franchise stores. Our experience with those accounts who were formerly strong accounts for us, whose volume dropped off sharply after going on the plan, there is an indication that they were not desirable outlets as far as volume is concerned. We don't, as a general practice, solicit those stores as accounts.

[fol. 163] Hearing Examiner Creel: But have you in any particular instance solicited business from one of those Brown accounts?

The Witness: I am satisfied that some of our salesmen have. I couldn't state a specific instance, to be honest with you.

### Cross-examination.

The witness very definitely agrees that the shoe business is quite a competitive one. Juvenile currently has approximately 2500 or 2600 retail outlets as customers. They sell department stores and shoe stores, and both are included in this group of 2500 to 2600. The company has a national advertising program. They advertise their Lazy Bones in Parents Magazine and Modern Romances. Their Clinic shoes are advertised in the American Journal of Nursing, in Registered Nurse, and in Glamour Magazine. Then they advertise in the Boot & Shoe Recorder and the Coast Shoe Reporter, which are trade publications.

Generally speaking, Clinic shoes are designed for nurses and beauticians and people that would normally wear white uniforms. However, they do make the same types of shoes in blacks and browns, which they label Clinic Off-Duties, for nuns, visiting nurses and certain women in professions that have to wear shoes other than white shoes. Clinics are not what you would normally call a high fashion or high style shoe. It is a service shoe, a comfort shoe. Their Lazy Bones line is not as extensive as the Brown Shoe Company's lines in that they do not have the number of patterns in each category that Brown has. But they are represented in each of the categories that Brown is. Taking the Buster Brown line as compared to the Lazy Bones line, there is a greater choice to a merchant in various colors or patterns or styles available in the Buster Brown line than there would be in their line.

. . . . .

The Lazy Bones line of shoes has competition from other lines of other manufacturers besides Brown. Jumping-Jacks would be a competing line, and so are Poll Parrott, [fol. 164] Wetherbird, and Red Goose. Also Gerwinettes manufactured by Schawe and Gerwin, and Acrobat, are competitive. The shoe called Dress-Ups is beyond the limit in price, where they would not be considered competitive. Most of their misses' shoes retail somewhere around \$8.95 to \$9.95. The price bracket has a substantial bearing on the competitive nature of the particular brand. There are within some of the lines mentioned above various price ranges.



Poll Parrott, Weatherbird and Red Goose were mentioned. Those particular brands cover a wide range of prices. There are certain types and certain price ranges that would be more competitive than others within those lines. That would be a number of the brands of lines of shoes that would be competitive with Juvenile's. In the children's shoe business any time anyone sells a pair of children's shoes he is a competitor because most families don't buy but one pair of children's shoes at a time, and wait until it is outgrown and outworn before they buy a second. So, as competition, he would also be able to include other brands of children's shoes, maybe in other price brackets, because they are fitting one pair of feet at a time. They realize as they go up the ladder on the price scale that the layer between those customers becomes quite thin. Blue Bonnet would be in the lower range of the price scale. Step Master, as a children's brand of shoes, would also be in that category. Pied Piper would definitely be in the higher priced category, and probably Stride-Rite. There are quite a number of lines of children's shoes competing for the sale of these shoes to youngsters requiring shoes, ranging from the baby or cradle type shoe up to the growing girls' or growing boys' shoes. And it is in that field that the Juvenile Shoe Corporation with its Lazy Bones line is competing with these other manufacturers of these other brands.

Brand name recognition very definitely plays a part in the merchandising of shoes. And the more you spend for advertising the nearer you come to saturating the market with brand name recognition. Brand name recognition certainly helps materially in selling the shoes at the consumer level. And to a certain degree it helps the manufacturer's [fol. 165] sales representatives in selling shoes to the merchants for handling. When a salesman is talking to a merchant his objective is to encourage the shoe retailer to carry his line as opposed to somebody else's line. That is the usual sales technique. That is the nut of competition.

Whether a shoe retailer in a town of 5,000 to 30,000 population is apt to carry more than one full line of shoes in a particular brand name would depend on the town, the economic conditions in that particular trading area. If he could carry an inventory that would have an adequate turnover, meaning that he had sufficient volume, he might conceivably

do that. In other words, a town, say, deep in Mississippi of 15,000 certainly wouldn't be considered as having an equal potential to a good industrial town in Ohio or in Indiana. That would bear on the particular merchant's judgment as to how he should stock his shoes and what the potential market was in that trading area. And that would govern his decision as to the shoes that he would stock.

The witness said to a certain degree there is a turnover in his company's accounts. People will die or go out of business or circumstances change, and you have some customers going off your list and some customers coming on your list. Occasionally it happens that the independent retailer may have decided to stock one of these competitive brands that were mentioned a moment ago.

. . . . .

The witness recalls making a statement that they do not solicit outlets that were not desirable. In using the term "not desirable", generally speaking, he had reference to a man's credit rating. Juvenile's terms are pretty stringent in view of the language of the agreement, and consequently, if a man is not top-notch credit, why unfortunately they don't stay together long. He thinks that reputation is pretty well known in the trade.

In the last recent years the size of his company has been growing so far as shoes produced and shoes sold. In fact, they produced and sold more shoes in 1959 than they did [fol. 166] in the preceding year of 1958. And the general financial condition and net worth of his company is continuing to grow through the years. And that is true as to the current year compared to last year. A great deal of expense and effort, and so forth, has been required to continue the upward trend of their volume. Back in 1947 when he first came onto the job he is on, they were strictly welt shoe manufacturers, and in order for them to maintain their relative position in the industry and to take their share of the volume, it became necessary for them to expand their operation to include other types of shoes.

For an example, in 1950 or 1951, in addition to the welt production, they had to go into little ways. Little ways give you lighter weight type shoes, give you moccasins, loafers

and other types of shoes which could not be made to sell in volume on the welt construction. Then in 1955 and 1956 they had to go into their boys' and youths' shoes, known as Little Gents shoes. And there again through additional efforts and expense of equipment, and so forth, they were able to shove ahead a little more to again retain their relative position in the industry. Just this past year they have completed and gotten into production in their new cement plant at Aurora whereby they make little girls' Dress-Up shoes. So you can see it hasn't been possible to continue to grow making just their types of shoes they were making some 12 or 13 years ago. It has been necessary for them to broaden their scope.

He feels that they have about got to the possible limits of what they, with their experience and background, are going to be able to do in broadening their line. Clinics are not style shoes. They are women's work shoes. So they know nothing of the women's style industry, style shoes. They couldn't get into the style shoe business, they would go broke quick. They have just about got to their limit as far as broadening their scope in order to maintain their relative position in the industry.

The witness was asked if a merchant stocks a complete line of Lazy Bones, which is his line, is that same merchant, if he is a small merchant, apt to stock another complete [fol. 167] line of children's shoes. The witness asked counsel for respondent to define a competing line. How many dollars difference at retail. Taking Weatherbird for an example, one account that they sell that uses some Weatherbird corrective types of shoes. His company doesn't make corrective types of shoes. A corrective type is a special type for a special purpose. Those shoes retail about \$2 above the retail price of Juvenile shoes for corresponding size range. Now, in an instance like that, he would say, "Yes." Of if the retailer covered quite a broad price range whereby he wanted to buy some special low-end merchandise, possibly low-end step-downs for a special promotion, which they don't make, he probably could find it in the Weatherbird line. Generally speaking, it is true that, except for the instance of a corrective type of shoe or a low-end of the price scale, if they stock the Lazy Bones they wouldn't use the exact comparable shoe of another line in

the same price range. And that is the sort of typical merchandising policy of many independent retailers when it comes to a decision of buying shoes for resale to the public.

The witness mentioned White's store at Blytheville, Arkansas. It was reported to the witness as a franchise store. He did not know whether the store had been on the franchise program for 5 years or 7 years. The Juvenile representative wrote him a letter at the time and said that Dick had told the representative that he was going on the franchise plan. That store still stocks Lazy Bones at the present time in a limited way, primarily in their growing girl shoes. Very, very few, if any, of the Lazy Bones Juniors. He does a pretty fair job on their Clinic shoes for a town the size of Blytheville. The witness assumes that he would stock Buster Browns as an alternative to the full line of Lazy Bones shoes if he is on the franchise dealer program.

The witness was asked if that dealer were not on the franchise dealer program but he stocked Buster Browns, would a person in that category be likely to stock Lazy Bones. He said that if he were the retailer and he was not obligated to buy any particular line to the fullest extent, then it would behoove him as a good retailer to pick what [fol. 168] he thought were the best values out of each of several lines. Being in the shoe business he is sure that Brown has certain shoes that are better buys for the consumer dollar-wise than other patterns. That, generally speaking, happens in most industries. A shoe retailer certainly has the ability to pick those styles from any line that would give his consumers the most for their money. If the retailer were not obligated to buy an entire line, there is no reason why he couldn't merchandise within the same price range certain styles from one line, and non-conflicting styles from another line. Then he would have in his inventory a range of various brands. The witness is sure Brown's representatives have been in many independent retailers' operations where they have seen several brands within the same price range, but not necessarily conflicts as to pattern.

Q. Now, I take it what you are saying now is that the idea of a retailer carrying several brands within the same price range is contrary to what you said a short while ago

in answer to another question in regard to conflicting lines. Do you recall stating that retailers frequently choose to carry one line of shoes in preference to duplicating it with another brand?

A. That's right. You will have some instances where retailers will buy one line in one price range. You will have other retailers who will buy from more than one line in the same price range. I don't think you can make a general rule that will cover all retailers. If we could then either all retailers would be exceptionally good creditwise or they would all be very poor creditwise.

The manner of handling the inventory has a bearing on the credit standing of retailers. The inventory they carry and the turn-over figures and how they merchandise their stock. As to whether the witness regards credit as a rather critical factor in his customer relationship, he stated, they haven't as yet been able to find any supplier who will furnish them materials without paying for them, and without getting paid for their shoes they have no way of paying their supplier. So they do business in the same way on the other end.

[fol. 169] Redirect examination.

His company's fiscal year ends October 31. They are not yet through 6 months of the year. Comparing sales from November 1, 1959, to date with the comparable period from November 1 of the last fiscal year, their volume is slightly ahead. Whether it is profitable for a shoe retailer to handle more than one line of shoes depends upon the operation. You will find some retailers who do carry one line within one price range, whereas you will find other retailers who carry more than one line. Generally speaking, it is difficult for all retailers to fully cover all of their needs from one line. Most retailers, at least to a certain degree, find some items from a second or additional line. He is referring to independent retailers now.

The customers his company usually sells to handle several lines of shoes and still stay in business and seem to make a profit. That's the qualification that he made a minute ago when he said most independent retailers will buy more than one line. Certainly some will buy more lines than others. But its pretty hard to get the best in each category from

one line. There are certain categories that certain lines do a little better job in than others. A retail merchant has the opportunity and privilege of selecting what he feels in his own requirement is the best category from any one of several lines within a price range. When he is referring to one line he is referring to one brand name. He thinks the retailer can better manage to give his consumers better values for the money by doing it that way, if he has that choice.

#### Recross-examination.

The witness was voicing that opinion both from the standpoint of his position as sales manager of the Juvenile Shoe Company, and also from his experience in visiting retail stores and talking with retailers that he has known over a number of years. But his capacity as sales manager is how he happens to be talking to them.

. . . . .

[fol. 170] As to whether it is a phase of the retailing business that many of the retail shoe merchants carry Clinic shoes in order to meet the customer preference for that type of shoe, the witness said, yes, we have good distribution on our Clinic shoes. It's entirely possible that that would be the type of shoes that merchants, retail shoe stores, would carry to take care of special customer preference that may not fit in with the other line of shoes that they carry. There are many of the Clinic dealers who have supplemented their white duty shoes by buying shoes from other lines than Clinic, in the same type of purpose shoe. Again it gets down to patterns, styles, preference, local preference. Maybe even in some instances fads, strange as it may seem, in nurses' shoes.

As to whether his salesman is interested in having a shoe store carry a full line of Clinics if at all possible, the witness said, it is our feeling that a retailer carrying our Clinic line of shoes can carry too many styles to profitably do a good job. We like for them to have every category covered to the best of their ability, depending on the inventory that their volume will justify. We certainly do not try to load up any man on Clinic shoes.



It's our policy, we have always told our salesmen, and our salesmen point out to any new accounts that they open, that the initial order on Clinic shoes is unimportant. It doesn't mean anything. And I point that out frequently because occasionally a man will come in to me or into our sales room, and we will want to buy AA's in two or three lines of shoes. And I say, if you are going to do the job right you have only two things to sell in Clinic shoes. You have fit and comfort and expense. And you can't properly fit shoes in two widths. Now, why don't you buy fewer styles and buy widths. The initial order is not important. We are not trying to sell you two extra widths to get 12 more pairs. At the end of the year you will see that the 12 pairs we are trying to get you to buy now is not for the purpose of getting in 12 extra pairs, but it is to help you do a better job to properly fit the girls so that you can, in turn, build your business and at the end of the year realize a greater profit from Clinic shoes. In other words, to carry the heart sizes of the Clinic shoes that would cover the [fol. 171] needs of the different customers with their different size feet coming into the store.

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JACK ALTMAN, called as a witness for the Commission, testified as follows:

Direct examination.

The witness is a shoe manufacturer. He is Executive Vice President and General Manager of Deb Shoe Company, Inc., a Missouri corporation. He was subpoenaed to appear here. Deb Shoe Company makes young women's, high style, fashion shoes. The witness has two office addresses. The principal office of Deb is at Washington, Missouri. He also has an office at 2120 Washington Avenue, St. Louis, Missouri. That is a show room, advertising, sales office. There is more than one factory. They are in Washington, Owensville, St. Clair, and Union, Missouri.

In one factory they make flat heel shoes, little flatty type, and low heel young girls and women's fashion shoes. In another factory they make women's mid-heel fashion shoes. Also they make wedgy type shoes and footed heel type. At

another factory they make strictly women's medium to medium high fashion dress shoes. Their shoes are in the retail price category \$7.95 to \$14.95. In the shoe industry that is in the popular to medium price bracket. A shoe from \$17.95 or \$18 up into \$20 up is a higher bracket. From \$10 to \$14 to \$15 is the medium bracket and from \$8.95 down would be the lower bracket today.

The witness has been with Deb Shoe Company since its inception, 1946. He was the founder of the company. It was started as a corporation, and it is the same corporation today. As to the positions he holds with Deb, other than the one he already testified to, he is a designer, salesman, sales manager, and "everything else except the janitor, practically." He supervises 25 salesmen. They sell their products in the complete United States, Puerto Rico, Hawaii, a few [fol. 172] shoes to Europe, and a few shoes to Japan. Their approximate gross volume last year in sales was around \$9,000,000. That's off about \$400,000 from the previous years. The squeeze is beginning to come. They made approximately 1,600,000 to 1,700,000 pairs of shoes last year.

The witness has been in a shoe store or factory all his life. He grew up as a kid in a shoe store with his father, who was in the retail business for 50 years in the South. That's all the witness has ever done is shoes, all his life. When he returned from military service, he came to St. Louis and started on his own in a small way to make shoes. From that he grew little by little, and then in 1946 he went into business with Mr. Sam Wolff of the Wolff Shoe Company. At that time it was Wolff-Tober. Now it is Wolff. He went to Owensville, Missouri, and stayed there continuously, except on short week-ends. He styled the shoes and helped set up the factory and he made the shoes, and then he went out and sold the shoes. He did practically everything until the production was about 700 or 800 pairs a day, and then he started putting on salesmen and they started expanding a little.

The witness has been all over the country many many times. He makes most all of the sectional shows. He knows a great many of the better shoe people and shoe stores and department stores in the United States. He is pretty well acquainted with most of the buyers and merchandise people

in the United States. As a sales manager he has familiarized himself with the major competition in the shoe industry.

The witness is very familiar with Brown Shoe Company's brands of shoes. All of their women's fashion brands compete with his company's shoes. They are priced at around the same price. They also have many, many of his patterns which he put in one season and they adopted the season of the following year afterwards.

Deb sells to approximately 1600 or 1700 customers. They manufacture shoes to specifications to the better department stores, specialty stores and shoe stores. They sell to retailers.

[fol. 173] Q. Is any sizable portion of your business done in the smaller towns, or is most of it in the big cities, or can you characterize it that way at all?

A. Well, our business in the beginning was greater in the smaller cities than today; but, due to the purchasing or the loaning of money, the franchise, whatever it may be, there is very little place to sell shoes in the smaller cities today.

Mr. Burke: Mr. Examiner, I move that the answer be stricken as not being responsive to the question.

Hearing Examiner Creel: Well, of course, he could turn around and ask him a question to which it would be responsive, and we would be right where we are. Overrule the objection.

As to approximately how many suitable shoe retailers would be found in the average town of from 5,000 to 30,000 population in the United States, the witness said this depends on the type of city it would be. He would say that up to 15,000 you have about 2 or 3, which today the big three controls practically. And there may be one man left there, he doubts it. Then in the towns of 15,000 to 30,000 population there may be 2 left that aren't controlled by the big three or four.

Q. I don't understand. What do you mean, "controlled by the big three or four"?

A. Well, let's face it. When corporations do 250 million dollars they have got to sell shoes. And they have got to sell somebody shoes. Where are they going to sell those

shoes? They are going to sell them in every nook and cranny that they can possibly get. And they sell those shoes, and I don't know how or why because I can't speak for every city. But you can walk into any town, and they have got their setup. And I dare you, in 90 percent of them, to find anybody else's shoes except the shoes of the companies that control those stores in those towns. I will take you into any city you would like to go.

Q. What do you mean by the "big three or four"? That's your term.

A. The big three or four is the Brown Shoe Company, with its subsidiaries—

[fol. 174] Mr. Burke: Just a minute. May I object? I object to what this witness has said in this last statement or speech as not being responsive to any question in the record. No proper foundation has been laid for the voicing of what apparently is this witness's own private opinions about certain things. And it may be what is on his mind; and certainly, if that's the case, it's not pertinent evidence or credible evidence for this proceeding. So I respectfully object to the testimony that's been given and move that it be stricken and that the witness be instructed to continue his answers to the questions that are asked so that the record may be kept in an orderly manner and that, if necessary, an appropriate objection can be made and testimony can be adduced in a proper way.

Hearing Examiner Creel: I am going to deny your motion and let his answer stand. But, Mr. Witness, I do wish you would try to respond directly to the question that is put.

The Witness: Yes, sir.

As to how many shoe outlets there would be on the average in towns under 15,000 population, the witness would say that little department stores, and specialty stores, along with shoe stores, average 5 to 6. That takes in like the J. C. Penney or a little specialty store. That takes in some other types. Maybe a dress shop. And also it would take in an average of 3 shoe stores maybe. But it would make up, he would say, around 5 to 6 stores that could sell shoes, of which he would say 2 were in the lower bracket of the 5 to 6, 2 or 3 in the middle, and maybe one in the better

level. In towns of that type you have only one of the better level stores, sometimes two. But as a pattern it usually works that way. One, maybe 2, of these stores would be considered by his company to be a suitable outlet for their line. It's the best and the second best.

As to the other classification of 15,000 to 30,000 population, he said, there you would have an additional 2 or 3 units that would sell shoes. And in a town of 30,000 you would probably have—a person of my type would probably have a choice of 2 spaces, of which either one or both are taken over by a chain. You know, that has departments [fol. 175] which specialize, as an example—or, if I might say, the Wohl Shoe Company can take over the better department in that town—if you can get it at any price.

Mr. Burke: Mr. Examiner, this witness seems to ramble and seems to persist in trying to throw into the record matters that are irrelevant and unresponsive to the question. I move that the last statement be stricken and that the witness be instructed not to put in his own personal prejudices in the record but to try to confine himself to the facts.

Hearing Examiner Creel: Well, of course, I see your point of view. But, on the other hand, I take it the witness is expressing his own opinion. There is one thing I wish you would do, if you can, Mr. Altman. Can you pick out a particular city and tell us the names of the shoe outlets and the brand of shoes that they handle?

The witness said, let's take Columbia, South Carolina. In Columbia you have Berry's Department Store, which is an independent. He is a specialty store. He has independent brands. He has the better brands. I would say he has Town and Country, Capezio, Mademoiselle, I believe. He is not a Brown store. The witness knows this of his own knowledge. The other store is a specialty, which is two doors away, and that is controlled by Wohl Shoe Company. The name of that store is on the tip of his tongue. That is the next best or in the same category of the better stores in this town. He guesses Columbia is 100,000 population, though. He said, let's take High Point, North Carolina, that's 35,000 people. In High Point you have two people to sell: Hubert Shoe Store, which is an independent, and the other store—I am trying to think of his name. I will try to think of it as I go

along. In the meantime this is also not a Brown franchise store. In this particular town of High Point—it's about 30,000 or 35,000—there's two stores that's fairly good to sell. And then Belk's has a store there, Belk's Department Store, which we sell Belk's.

He thinks Belk's buy ladies shoes from different sources. They have quite a number of stores, he imagines 100 or [fol. 176] better. They have the best department stores all over the Carolinas. And then the other 3 units are lower prices, from medium to low, of which one is a Brown store, he thinks. He doesn't remember the name of that store. This is in High Point. He doesn't know if its a franchise store. But this is the pattern. That's a town of 35,000.

High Point is a 35,000 town. There's about 6 or 7 places to sell shoes, of which 3 or 4 are very poor, 2 are fairly good, and then 2 are good. That's a typical town. He just picked that out. He doesn't know whether Brown is franchised there or not. One of the stores there handles Brown shoes. It is one of them he happens to know. There is many towns he could name where it is closed in by the three. He is just using this as some kind of an example. He said, not to show any prejudice, I took one that I don't even know.

Q. Well, do you know a town that you feel is "closed in by the three," as you say?

A. Oh, I know many of them. Many of them.

Q. Now, you know this of your own knowledge? You have been there?

A. Yes. I mean I have got the records that I have been to. There's plenty of them. And much larger. And there's many that you can go to, practically any city you like, today, a small town, and there are—I have 25 men that will verify that there's no place left to sell shoes today of our type in those towns because they are either financed, inaugurated, by one of the big three, or they are into such a condition—Maybe should I stop again? I am getting off—

Hearing Examiner Creel: Perhaps. But I would like to know who you considered the big three.

The Witness: Brown, General, and International. All do over 250 million dollars each a year. With just oodles and oodles of subsidiaries, retail units, manufacturing units, making three profits—one from the leather department,



one from the producing-of-shoes department, and another from the stores. How can a little manufacturer today compete with that?

Mr. Burke: I understand you are quite hostile toward Brown?

[fol. 177] The Witness: Did I say I was?

Mr. Burke: I just gathered it from what you said.

The Witness: Oh, you gathered it.

Mr. Rogal: Can we have that remark of counsel's not taken down as a part of this record, Your Honor? It was interrupting into my examination.

Mr. Burke: I would suggest that this voluntary statement in regard to this matter be stricken from the record also.

Hearing Examiner Creel: No. I think I will let everything stand in the record. But I will strike his comment that these companies make profits from these three separate departments. I think he couldn't have personal information of that. You don't know that of your own knowledge, do you, Mr. Altman?

The Witness: I have never seen the records, but I know some of—I am a leather buyer, and I know that the leather department of the Brown Shoe Company buys leather, and it's held under a separate setup and billed and shipped to the factory and, I understand from many, many people for many years, at a profit. And then the shoes are manufactured and sold at a profit. And the records stand where the profit is bigger every year and in the millions. And then they have their outlets; either the Brown franchise, Wohl, Wohl plans, and all these other things, which is also a profit.

Hearing Examiner Creel: My ruling with respect to the comments regarding the profits of the three different departments will stand.

Mr. Burke: That would apply to his later statement, too?

Hearing Examiner Creel: Yes. Go ahead with the next question.

The witness is familiar with the term Brown franchise store. He thinks he knows what a Brown franchise store is. He got that knowledge through his every day work, with having sold some Brown franchise stores, working with [fol. 178] people who own Brown franchise stores, his

salesmen, and just every day knowledge of living in the shoe business.

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As to whether his company makes sales to stores, which he is aware are Brown franchise stores, the witness said, we have maybe one or two left of a very small capacity. Just a few. They are not still selling to Hill and Shipe, a Brown franchise store. It is a known fact it is. Everybody knows it and they admit it. They told the witness and they told his representative that they were. He thinks it was in 1953 or 1954 that he first learned of it. As to whether he continued to sell them after he learned that, the witness said, well, they didn't buy. Hill and Shipe have 5 stores. The two partners are affiliated with 4 or 5 stores. Norman, Ada, and Ardmore, Oklahoma, and Sherman, Texas. (Here the witness said he was reading from "some notes of some different people who we sold that were Brown or Wohl people who no longer buy from us".) In 1953 Hill and Shipe purchases were about \$10,000, in 1954 practically nothing, and in 1955, zero.

Q. Do you feel that you have an equal chance to sell to a Brown franchise store as you do to a non-Brown franchise store?

Mr. Burke: I object to the form of the question. It calls for speculation and an answer as to equal chance.

Hearing Examiner Creel: Overruled. I would like you to explain your answer after you give it, though, or in giving it.

By Mr. Rogal:

Q. Do you remember the question?

A. Do I have an equal chance?

Q. Yes.

A. I don't have any chance.

Q. Would you explain your answer?

A. Well, it is a known fact, we all know, that today these stores, these different large organizations, are fighting for more and more retail business. That's the ultimate aim. All of these purchases of retail units, all this taking over and [fol. 179] financing of these stores, is for one purpose.

Q. We are going off the point just a little bit.

A. All right. O. K.

Q. We are dealing more with the Brown franchise stores. You said, "I don't have any chance to sell to them."

A. I do not.

Q. Now, what is that statement based on?

A. That's based on the fact that if they want an item which I manufacture, Brown will make that product for them and tell them they will make it.

Hearing Examiner Creel: Do you continue to call on these Brown franchise stores?

The Witness: We try, but you get so discouraged—and we have been in the last few years—that it would be a joke. Like someone would give me their child in my house to feed it. It would be the same thing. They are going to take care of their children, and their children are going to take care of them; not their neighbors.

By Mr. Rogal:

Q. The question still was, you stated you have no chance to sell to a Brown franchise store. Now, has that been your experience? Is that what you are telling us? And, if so—

A. Well, let me say this: That with the additional field managers, the additional pressures that these organizations have put on, with their closed-in deal, which is a known fact, how could a small independent like myself have an opportunity to go in and sell against someone who gives them a setup of auditing, financing if necessary, instructions, window displays, all these many factors and many things which a little fellow, which Brown was at one time but not today, couldn't give them? How could they come to me as an independent? Or how could I have any opportunity against that? It's just something you can't combat.

Q. Do you think those are valuable aids to a retailer, that you mention?

A. To that retailer it's his life. It's like giving blood to anyone who needs it. After all, we know what's going on. We are all human. We can see. We can hear. The facts are that [fol. 180] they control. And if they didn't control there would be other products in these stores. And they are limited. Some of their stores may have other people's products,

but it's limited. Of the 700 stores I would say a very small percentage has other people's shoes.

Hearing Examiner Creel: Mr. Altman, when was the last time that you yourself called on a Brown franchise store and attempted to sell them?

The Witness: Well, I personally haven't sold any shoes. I do go out, sir, with my men.

Hearing Examiner Creel: Well, when you were present.

The Witness: Since it's been me myself, I would say it is 4 or 5 years.

Hearing Examiner Creel: Do you remember whom you called on?

The Witness: Well, I think in Texas we called on some Brown-built stores.

Hearing Examiner Creel: Can you give us the conversation that you had with the store operator, the substance of that conversation?

The Witness: Well, I remember in Dallas going into a couple of Brown-built stores, but, Your Honor, I don't really know.

Deb Shoe Company advertises in national magazines: Vogue, Mademoiselle, Glamour and Charm combined today, and Prom, also, Boot and Shoe Reporter and Footwear News, which are trade magazines. They also advertise in local pamphlets like little high school folders and things like the telephone books for the kids in different cities. Deb is the company's best known brand. Then they also have three other nationally advertised brands—Miss Deb, Demosette, and Fandango.

They have sold a store called Bomar's of Jackson, Mississippi. Bomar's has 7, 8, or 9 stores. They are not selling to them now. That's a Brown set up today. They have sold to Clarence Fafiak of Cleveland. He has quite a few Fafiak [fol. 181] stores around Cleveland. He is also 100 per cent Brown today. The witness is sure of that. They were selling them at one time, but they don't today.

David's Shoes is an example of a Brown store they do sell. It is located in Phoenix and the Mall suburban of Phoenix. David's is two young men who are friends of the witness. They are independent, and they are close to Brown. They do a good Brown job, but they haven't been able to take this over 100 per cent. He said, they continue to

buy some outside shoes, my line and 2 or 3 other nationally advertised lines and there are other stores that I know of this type while the majority of the Brown plan stores are 100 per cent. There are some that I know of that are not of this type. That's why I said there were 2 types. This is one that he can sell to. His volume is fair. They do a nice job with Deb's shoes.

His company has sold to the Westwood Bootery at Los Angeles, California. They are not selling them now. They last sold that store about 2 years ago. They are not selling now to Phillips Bootery of North Hollywood, California. That's a Brown store today. They formerly sold to them. They are not selling now to Harold's Shoes in Pasadena, California. (The witness is reading from a list that is in evidence as Commission's Exhibit 23, which is a list of Brown franchise stores.) They did.

His company is not selling to Howe's Shoes at San Bernardino, California. That store used to be a customer. It ceased being one of their customers about 2 years ago. They do sell to Sebastian's Shoes at Santa Ana, California. They still sell him a few shoes. He buys one particular shoe, one or two. It's a particular type that no one else makes but them.

#### Cross-examination.

The type of shoe that his company manufactures is a high fashion shoe. As to whether high fashion shoes have a tendency toward being replaced by other fashion, and whether it is a fashion of short duration, the witness stated [fol. 182] that shoes which they produce this year are produced by the big people the year after.

As to whether the witness makes a general line of shoes or whether his shoes are known in the trade as a "short line" of shoes, the witness said he makes the longest line of factory shoes in the business. His shoes are unique but they also have plenty of competition. Rhythm Step is not a competitive brand. Neither is Allures. Town and Country is a competitive brand. Naturalizer, Life Stride, Air Step, Glamour Debs and Risque are some of the other competing brands. Those are Brown shoe brands. Others are Capezio, Adoree, Town and Country, and Jolene of Tober-aifer in a way. Arthur Murray Flats are out of business. Lucky

Stride is a competitor. So is Vitality, in a way. Natural Bridge is not a competitor. Queen Quality is a competitor, in a way. So is Fiancee. When he says "in a way" he means that they may have one or two, a short part of their line similar to his line.

Red Cross shoes compete in a way. They make a few welt shoe types, but limited. As to the difference with regard to Red Cross competing in a way with his line and Air Step directly competing with his line, the witness said Air Step is much more fashionable. Also, Naturalizer has many other things that Brown makes that are brought in, like wedgy types and various other types which are different than Red Cross.

A line like Naturalizer would offer the retail merchant as many things as he could possibly get to get the business. His line is not 100 per cent the equivalent of a line like Naturalizer. Naturalizer and Air Step today are becoming more of his type or making inroads to his shoes of fashion. To get that additional business Air Step is one with a staple line. In other words, they are becoming very much more up to date. That's one of the factors that makes the competition he is faced with somewhat difficult. There are many of them.

His company has some 1600 to 1700 customers. All of their customers are makeup customers. They do have a few in stock, a few shoes, staple, more staple, he would say. [fol. 183] They will take 3 or 4 or 5 of their patterns and they stock those in a small way. Their business is principally a fashion makeup business. They have samples and their men go out and sell these shoes to the customers and all of those shoes are makeup shoes. If a customer orders it, it is made to his specification. Now Brown Shoe Company goes out and they have makeup, but they have definite stock shoes also. Naturalizer is both a stock shoe and a makeup shoe. They have certain patterns they don't gamble on. Those are only for makeup. Then if they can get enough of their franchisers to take those shoes, they will put them in stock. He is talking about the Air Step as well as a franchise store.

As to whether he regards all independent shoe stores that handle Naturalizers as a franchise operation, the witness said no, that's a Naturalizer franchise. There is a dif-



ference. There is a complete franchise like a Brown franchise store, and then there's an Air Step franchise. This is his opinion.

As to whether that's the basis which he used to refer to franchise somewhat frequently during the course of his examination, the witness said, no, sir, don't get me wrong. When you are in Atlanta, Georgia, you have a franchise downtown, Rich's. Brown Shoe Company has. That's their franchise downtown. That's a Naturalizer, Life Stride, whatever they make. They sell Air Step and Naturalizer in the same store. In every department they have got a different set up of shoes. Just like Litt Brothers. They just took over Litt Brothers. As to where he got that information, he is there, he sees it, he gets it from the buyer. Litt Brothers store is in Philadelphia. That's one of the largest, if not the largest, Brown franchise stores in America. It's one of the largest department stores downtown in Philadelphia. And they have 4 or 5 suburban stores, like Famous Barr. The witness would call Litt Brothers downtown a Naturalizer franchise. And he thinks Brown Shoe Company does too in their correspondence. He wouldn't swear to it. He hasn't seen that in writing.

The witness was asked whether he has the reputation in the trade of using the maxim that he sells to "everybody [fol. 184] but the barber shop." He said, yes. And may I quote Mr. Schaefer, your vice president, that "Now we are following in the steps of Jack Altman, we are also selling the barber shops." For example, in Cleveland you have 4 Air Step accounts where you are supposed to have one, and they are all repeats. They are all franchise. Air Step. The names of these stores are Higbee's—last year they were selling Higbee—Halley Brothers, Stone's and the May Company store, Taylor's, William Taylor. That's a May Company store, and that's a franchise. All four Air Step.

The witness testified in the United States District Court in St. Louis in the case of *United States v. Brown Shoe Company and Kinney Company*. Testimony of the witness in that case, that one of his favorite maxim's was that he sold everybody but the barber shop, and that he sold everybody, was read to him. The witness recalled that testimony.

The 1600 to 1700 customers of his company are based on the sales activities of their 25 salesmen. He lost some sales-

men this last year. He loses some every year. He lost one good producing salesman this last year. The reason that salesman departed is because the witness wanted to put on an additional man in this particular area to try to overtake some of the business that he lost because he had 45 units with Wohl Shoe Company, of which today he has zero. And a lot of them were on the West Coast. And in order to keep his business today—and he has done it in many areas—he has had to put on additional men in little towns to try to overcome the business because of the squeeze. Many of these 45 units are on the West Coast. Some of the best. That was in the salesman's area that he replaced.

It is not the witness' position that only the lines of Brown Shoe Company compete against him directly, such as Air Step and Naturalizer. All of the other names he gave were bidding, you might say, for the independent retailers' business. Everyone in the normal course of business has a turn over of customers, including Brown. He has lost customers for a wide variety of reasons that are commonly found in the retail merchandising business. But the [fol. 185] biggest loss is due to either being purchased, financed, or taken over by someone else.

He doesn't sell W. T. Grant and Baker's. He does make up shoes for Edison Brothers. The only one he lost was a million and a half dollar business to Wohl. That was in 1956 or 1955. He testified before that that's why he doesn't have a business today. And he guesses after this he won't have any; he will be out of business. In 1955 he did \$1,300,000; in 1956 he did \$886,000; in 1957, \$640,000; in 1958, \$225,000; in 1959, \$80,000, and this year we have got so far as about \$7,000 or \$8,000. Which means that from \$1,300,000 it's down to about a \$20,000 a year business.

As to whether there was a decision made that for some reason they did not like his shoes, the witness stated that the Vice President of Wohl Shoe Company made a statement to him that he was the man that came to Wohl Shoe Company when they had a young business, that he built up that business, that they have a great need for the witness today, that he would like for the witness to be selling them again. As to whether perhaps they found other sources for the same type, the witness said, yes, sir, Brown Shoe Company. A big majority from the Brown Shoe Company. The

witness knows where his business went, the majority of it. He knows the men he worked with, who they buy from, and he was pretty close to them.

Other companies compete in styles and make shoes similar to his styles. Brown or any other—his company comes out with fashion shoes. It comes out with say 500 shoes. If his company has 4 or 5 excellent shoes, and they know it and they are selling good, then so to speak they “knock those shoes off” the following year or the following season. It could be that this is true of every other shoe company, that they are apt to make similar shoes that might be regarded as hot numbers. It is not always a fact. There are others besides Brown that do that too. And of course when they fill out their lines with these new fashions, it naturally affects the same model that he produces. And that’s what happens in the shoe business.

[fol. 186] Redirect examination.

The witness changed or lost a salesman last year, in California. He has a salesman that Brown would have liked to have. They tried to hire him, but he went with someone else. He left the witness’ company and went with some other company. No part of the lost sales for that year was due to that fact. His sales are just as good in that particular area because he put on two men. In other words so to speak they “beat the bushes.” (Tr. 358)

There is a distinction in his mind between a Brown franchise store and what he termed an Air Step or Naturalizer franchise. He said, a Brown franchise store is a complete store of Brown shoes—and just try to get anyone else’s in. When counsel for the commission was questioning the witness about Brown franchise stores, that was what he understood was a Brown franchise store. As to why the witness called a store that happens to be buying just Naturalizer a Naturalizer franchise, the witness answered, well there are several words you could use. You could call it “franchise.” You could call it “agent.” You could call it “representative.” You could call it any of those names. But would you say Rich’s in Atlanta was a Naturalizer franchise, or would you call him a Naturalizer agent, or what would you call him?

As to whether there is a clear distinction in his mind be-

tween a Brown franchise store and a store that has Naturalizers such as Rich's, the witness said, I just gave that. A Brown franchise store is a complete line of Brown shoes, dominated 100 per cent, or up to maybe 1 per cent or 2 per cent of some auxiliary items. But that's a Brown franchise store. In Brunswick, Georgia, they have got a store that's a 100 per cent Brown franchise store. In Atlanta they have an agent which is a Naturalizer agent or franchise for that one brand.

The witness would think that this Naturalizer agent or franchise such as Rich's get all these additional benefits he described when he was discussing a Brown franchise store. As to whether they get the benefits of the regular franchise program, he said, not naming that store. I know lots of stores where I couldn't begin to compete with what Brown [fol. 187] will do or does to stay in the store. I am not big enough. Brown gives its customers benefits; they take mark downs; they give them special merchandise; they do lots of things.

#### Recross-examination.

The franchise store in Brunswick, Georgia, referred to by the witness in one of his answers is a little store. Quality Shoe Store is its name. He knows as a fact that it's a franchise store, 100 per cent. And that's the basis on which he makes these statements.

With regard to the store mentioned in Atlanta, Georgia, Rich's, that's a department store. The witness also sells shoes to that store. As to whether that is what he characterized as being a form of franchise he said, I consider two types of franchise. If it's an automobile agency, Ford has the franchise, see. If a store in Cleveland has Air Step shoes, he is the Air Step franchise. From a child I have known that to be an Air Step franchise. However, this term of a Brown built store or a Brown built franchise or Brown franchise is a complete store of Brown, all their franchises. The witness didn't say that none of these complete franchises can buy other shoes. He said, 90 per cent of them don't have any other shoes. That could be a preference of the individual store owner, "with pressure." It could be their preference. But also there is other things to make

preference. How do you term preference? The witness agreed that he and his salesmen tried to make a preference in favor of their shoes when they talk to a retail merchant, but not under the same set up.

#### Redirect examination.

With respect to the store in Brunswick, the witness personally visited the store in Brunswick 2 months ago, Christmas, when he went to see his mother. He talked to the man. He examined his stock. He talked to him in his store just as a friend because he knew him. His name is Whilden. He talked to him and his wife just a month ago. He has been many years a 100 per cent Brown franchise [fol. 188] store. They allow nothing else in the store. The witness drew his conclusion from just looking around. He didn't discuss whether the store was on the Brown franchise. Why should he? He didn't want to embarrass himself or the man. The witness did not try to sell him any shoes. That opinion is based upon what he saw in his store, and the witness knows what it is.

#### Recross-examination.

As to why the witness didn't try to sell him any shoes, he said, why should he buy shoes from me when he is 100 per cent Brown. Just like all of the others. The witness does not think that when a store carries a complete line of shoes that would satisfy his needs in serving his customers. He would like him to have their shoes there. As to whether he would have an inventory problem, the witness said, if he did your subsidiaries of Wohl Shoe Company wouldn't be carried over when they take over a department. And the day they come in we come out. But they do put in lock, stock and barrel as many Brown franchises as they possibly can, and then they augment that because the store managers want other brand names to try to do more business. As an example of what he is talking about, he cites Blumberg's, Dothan, Alabama. The day Wohl walked in, we walked out. We were there for 10 years. Oppenheim-Collins, 12 stores. The day they walked in, we walked out. They took over last year.

May 3, 1960

J. R. JOHNSTON, recalled as a witness for the Commission, resumed the stand and testified further as follows:

Cross-examination.

He is the same Mr. Johnston who was here last March and previously testified and identified himself as the man in charge of the franchise stores division of Brown Shoe Company. In that capacity he is acquainted with the program that has been referred to as the Brown franchise store pro-[fol. 189] gram and the purpose for which that program was designed. The purpose of the program is designed to be of assistance to independent shoe retailers. Assisting the retailer in the function of his business, in sitting down and counselling with him from time to time, and for any suggestions that are possible for the witness and his staff of field representatives to make that might help the retailer be a better merchant and these discussions involve many subjects that are in the best interest of his business. That is the broad description of the purpose of the program.

An independent shoe retail merchant does not have to belong to this Brown franchise store program in order to sell Brown brand shoes. The witness was shown Commission's Exhibit 25, the Franchise Agreement. That agreement outlines the various things that a franchise store has available to it on becoming a member of the Brown franchise store program.

The witness agreed that the first page of Exhibit 25, which is 25-B, since the cover is 25-A, says that a certain number of services, architectural plans and field representatives, and the like are extended to franchise stores which become members. The franchise store is not required to adopt all those services which are furnished. It is a personal decision for that merchant becoming a party to this program. The witness as head of the Brown franchise program does not force those benefits on them. The benefits are designed for the purpose of helping the store owner in the conduct of his business.

The independent retail store owner who becomes a part



of the Brown franchise program does not have to accept any of these services that are provided under the program. The retailer makes the decision as to whether he takes any of these services. They are offered for the convenience of the retailer.

The witness has been connected with the franchise stores program approximately 8 years. He would say that the biggest problem that confronts the retailer is his ability to do a real good profitable merchandising job. The Brown franchise store program is very much directed to that end. The [fol. 190] dealer is provided a merchandising system that, when used as it is intended to be used, helps the retailer to be in a good position to make decisions for himself that are in the best interests of his business. It helps him analyze the various classifications and items and brands of merchandise he is carrying in the store and after an analysis, however often he might choose to make that analysis, it helps him make decisions regarding the future of any of those items or classifications for lines that he might be carrying in his store.

In addition to the merchandising system they are also provided an accounting and bookkeeping system. These are for the convenience of the independent retailer. He would think the problem of merchandising is just about the number one problem. What is meant by "merchandising" is the kind of a job a retailer does with an inventory of shoes that will cause him to turn in as profitable a performance creates a problem in the operation of the independent shoe for himself as he knows how. As to whether inventory store the witness said, some yes, some no. Some retailers are able to do a better job of merchandising an inventory than others.

An illustration of a better job of inventory merchandising would have to use an approximate average that is accomplished by a family shoe store or family shoe stores across the country. A good merchandising performance of an independently owned family shoe store would be approximately two times turn a year. That is, turning an inventory twice a year, two, two and a half times. He would consider that an average performance. He thinks the average inventory turnover for 1958 was 1.9. That is an average. He would recommend a two and a half time turn.

As to whether the witness wouldn't recommend as high as the man could go, he said, he recommends a two and a half time turn for the family shoe stores. That is his recommendation in view of that retailer doing the kind of a volume job that would cause him to reach a great percentage of customers, by not losing any more than a minimum number of sales of customers who come into the store. It [fol. 191] would be fine to turn an inventory five or six times a year, but when he does that he is missing business. He doesn't have the size of the inventory. If you turn too fast you lose business. A high inventory can be a misleading figure to the general doing of business.

This is one facet of the inventory problem of losing sales. It could have extremes both ways. When turns are too slow, that oftentimes results in an excessive amount of obsolescence within that inventory which causes many customers not to be interested in a greater percentage of the merchandise that retailer might be carrying in his inventory, because of age, fashion-wise. Some of the shoe inventory is seasonal. That is in the area of obsolescence, style as well as seasonal. Obsolescence has a great bearing on what that retailer is able to sell that piece of merchandise for. And they often say in the trade today that a piece of merchandise is only worth as much as the customer is willing to pay for it. In the shoe business there is a tendency to have a greater percentage of obsolescence than in other types of business, particularly hard lines, hardware and things of that nature, where there isn't the style and the pattern and the colors, and material changes that come about in the shoe business.

The witness feels that the shoe business has a critical area in regard to this inventory situation. He regards that as perhaps the greatest single problem a merchant in the shoe business has. The longer merchandise is in a store and is not being sold, it has a tendency to depreciate in value in the eyes of the consumer. He gets rid of it by putting on clearance sales. Also by merchandising them out of his stock with an advertised clearance sale on occasion. Sometimes he sees fit to sell merchandise to what we call jobbers in the trade and cancellation stores.

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[fol. 192] As to the matter of shoe inventory in an average retail store, the witness said, we believe, and perform-  
[fol. 193] ance will pretty much substantiate our belief, that a dealer who concentrates on as few lines as he possibly can will do the best job for himself. There are a number of factors that enter into it. When a person concentrates on as few lines as possible, by and large there is considerably less advertising expense, because it is only necessary for him to advertise fewer lines, and by advertising fewer lines he can make a greater impact on his market by having the names of those brands in the press and on the radio and whatever his media of advertising might be. He is in a position to keep those names in the minds and in the eyes of the consumer more often. When the witness says line or brand, he is referring to the same thing.

From a merchandising point of view it, by and large, causes the retailer to have less merchandising problems. He has fewer salesmen calling on him. The more salesmen you have calling on you, the more you are tempted to buy merchandise that perhaps you might not need in your store. The more salesmen you have calling on you, the more exposed you are to having a larger inventory. That happens quite a few times to quite a few people. It depends on whether your salesman has more sales ability and your resistance might be less than his sales ability. It generally results in a greater unbalanced inventory. If you got into several lines that might directly conflict, it would cause an unbalance in inventory. The reason is that if lines of shoes directly conflict, as that interpretation is understood in the industry, there are in most cases very important patterns in those conflicting lines. They very often would be the best selling patterns in each conflicting line, because of them conflicting so to speak. And each of those salesmen is naturally going to try to sell the retailer the most important patterns in his line, because those are the patterns he feels the retailer can do a greater job with, and as a result it causes the salesman to do a better job from the standpoint of getting larger orders. They are interested in getting sizeable orders from the dealers, as large as the traffic will bear so to speak, and if you have patterns that directly conflict with each other, in conflicting price lists, it very often results in the dealer and the salesmen having conflictions of

[fol. 194] stocks, because those salesmen are naturally interested in having their line placed with the dealer.

By conflicting price lines the witness means the same or comparable price lines. It might perhaps vary fifty cents a pair or a dollar a pair.

Hearing Examiner Creel: One of the witness in St. Louis that I am sure you heard—I have forgotten who it was—he thought that a shoe dealer would be well served if he would select patterns from many lines that he thought would sell well in his own store.

I don't recall whether he said conflicting price lines. He was talking about fast-moving patterns. Do you agree?

The Witness: I would agree if I were a manufacturer. But from a retailer concept, I disagree.

I think I remember the witness who made that statement, and I have to say he was speaking from a manufacturer's point of view. But from a retailer's point of view as I mentioned a few moments ago, if a retailer would buy spot items, or hot shot items, or buy this one from this manufacturer's line and another from another manufacturer's line, it places a greater share on his shoulders to be meaningful in his community from the advertising point of view to say nothing of the problems that it causes from his own merchandising point of view.

Hearing Examiner Creel: Well, I thought from what you said before that you probably disagreed with that.

The Witness: I disagree with it from a retailer's point of view.

As to the effect on retailers, in most cases it results in unbalanced inventories, inventories that might be excessive. When you have a combination of excessive inventories and unbalanced inventories, generally you are headed for retail troubles, because it doesn't work satisfactorily.

In his experience the witness would say that the average independent shoe retailer is not able to successfully make [fol. 195] this type of selected purchase or hot-shotting. The average independent retailer lives in a small world, so to speak, and he does not have the opportunity—he has the opportunity but he just does not go to the market. He does not go often enough to keep himself abreast with all of the new things that come out from month-to-month, season-to-

season. He does not have as great an opportunity for exposing himself to the actual goings on in the industry as the larger retailer does, who possibly travels to market 4 or 5 times a year, and is exposed to the many more facets of the shoe business than the average independent retailer in the town of 5, 10, 25 or 30 thousand population, because that independent retailer does not travel that much to expose himself to all the new lines.

In regard to the Brown franchise program, as to whether the program is designed to provide that this independent shoe retailer will concentrate his lines on Brown brand shoes, the witness said, No. It is intended—we encourage concentration, yes. They encourage concentration for all the reasons he has discussed as being one of the chief problems of operating a shoe store. And that is the substance of the following clause which appears on page 25-C, Commission's Exhibit 25-C: "I will concentrate my business within the grades and price lines of shoes relating to Brown Shoe Company franchises of Brown's Division, and will not have lines conflicting with Brown's."

Hearing Examiner Creel: Let me see if I understand that.

Are you saying that you do not concentrate on selling Brown lines to the Franchise account?

The Witness: Absolutely not. These stores buy many other lines.

Hearing Examiner Creel: That is not any concern of yours. It is your concern to sell as many of Brown's lines as you can.

The Witness: That is correct.

The witness encourages these stores to concentrate on the Brown lines within their grade. The independent shoe merchant is not required to carry Brown lines exclusively. [fol. 196] He makes that decision. The independent store coming on the program is not required to come on the program in order to be able to buy Brown brand shoes. He can buy Brown brand shoes without being on the program. The decision of getting on the program is left up to the independent shoe merchants. The dealer makes the decision as to whether he wants to, after Brown makes him the offer. Brown invites him. If he wants to go in the program he can

decide to or not. But that is not a condition to his being able to buy Brown brand shoes. And if he goes off the program he can still buy Brown brand shoes. The witness would say this happens in very instance that he knows of, if the store continues in business.

The decision of stores on the program to carry other lines is a decision that the store owner makes for himself. A store owner on the franchise program is not in any way prohibited from dealing with or buying shoes of other manufacturers.

As head of the Brown Franchise Division the witness has knowledge that the Brown franchise stores carry brands of shoes other than Brown brand shoes. He got that knowledge from actually seeing it in shoe stores, and from written and verbal reports he has received from their field representatives. He cannot tell the exact number of franchise stores carrying brands and lines other than Brown, but he does know that it exists. He would say a minimum of 80 percent of their stores carry other brands. Some brands are conflicting.

In regard to those stores carrying any other brands which may be conflicting, not all of them are continued on the franchise store program. Asked why not, the witness said, carrying a conflicting line might also involve other reasons as to why they might ask a dealer to withdraw from the franchise program. For illustration, if a man is carrying a line that directly conflicts with a Brown Shoe Company line and the line he is carrying for Brown ceases to be an important part of his business in that price category, and if he possibly might be a credit problem, or he might not be keeping the reporting system as requested, [fol. 197] which is helpful to him to do a good job for himself, they very often find ourselves in a position of not being able to offer suggestions and be of much help to that man any more.

If the Brown brand the man carried ceased to be an important part of his shoe store operation by reason of conflicting lines that he is carrying, that affects the ability of witness said, because the line he might be carrying would the franchise program to function. As to the reason, the be a direct conflict. We are not familiar with that line, how that line functions, and its services and style not as we are



familiar with our own Brown brand. So we are just not in a position to sit down and work with that man and discuss the intimacy of his business, the segments of his business, because we are not familiar with the lines' functions that he might be buying, that are in direct conflict with our line. The witness has reference to the activities of the fieldman under the franchise program in dealing with the store owner. That is what he meant by "we" when he said "we are not able to" do certain things. That is one circumstance under which stores might be asked to withdraw from the program.

Other circumstances might be such as credit. They might not be able to get along with that dealer for many reasons. The dealer, for some reason, might not be too anxious for the fieldman to call on him, or he might take it upon himself not to divulge the intimacy of his business for personal reasons. When a field representative is not in a position to call on a dealer and discuss the operations of his business with him, and when the fieldman's functions ceases to be helpful to the particular store, that might be one of the reasons that they would ask the store to withdraw from the program, if the fieldman's services cannot contribute anything to the success of the store in the way of consultation.

In other words, the program initially is being set up to help the retailer or the retail store, and if the retailer or store owner in effect rejects their help or doesn't co-operate, they necessarily ask him to withdraw.

Hearing Examiner Creel: That is what I don't understand. [fol. 198] stand. Why is your company concerned about it? These services, of course, cost something, but if a Franchise dealer doesn't want them, if he just wants to operate his business in some other fashion, but continues to buy from you, why do you care whether he continues to be a Franchise account or not? You want to continue selling him those lines, I presume. What difference does it make whether he continues to be a Franchise dealer or not?

The Witness: It is merely a matter of record, in numbers, that is all. It is whether we have 683 stores today or 682 tomorrow because of a store having been removed from the list. It is just by the number.

Hearing Examiner Creel: If he doesn't avail himself of

the services it doesn't cost you anything to continue him as a Franchise account, does it?

The Witness: No.

Hearing Examiner Creel: But you have a policy, I understand, that if he doesn't want to work with you you more or less have no purpose in continuing him on the Program. Still I am trying to understand. As I understand it, you don't change your relationship. You just don't call him a Franchise account, is that correct?

The Witness: That is correct.

By Mr. Burke:

Q. The man still, in most instances, remains a customer of Brown's, is that correct?

A. Yes.

As to what the term "franchise" means when used in connection with franchise of shoes, or franchise agreement, or a franchise for my retail shoe business for the following advertised brands, the witness said it means customer. When an earlier witness talked about certain stores having franchises and certain brands of shoes it merely meant a customer or dealer. A retail store when it goes off the program is still a Brown shoe customer if the owner chooses to be. So to that extent this Brown shoe franchise as a customer would not be terminated. He would just no longer be [fol. 199] a franchise store. That would only be dealing with the scoreboard that the witness keeps in his department.

The witness said it might be a little helpful to explain why they named it a program, the Brown franchise program. Many years back it was known as a Store Plan Division. For many years it was the Brown-Bilt Division, Brown Plan Division. Approximately 15 years ago the name of the division was changed to the Brown Franchise Division, simply because they thought the name Brown Franchise Division was a better name. He wouldn't say that it made the retailer think he was getting more. It was just a different handle, so to speak.

Q. I notice in this, what has been referred to as the Brown Franchise Agreement, there is reference to the fact that either party may cancel on 30 days' written notice to

the other. Is that followed to your knowledge in any strict manner?

A. No.

Q. If a Franchise Store owner chose to withdraw from the Program he could do so immediately if he so desired?

A. Yes.

Q. Is there any purpose for having the 30-day provision in this document?

A. Well, about the only purpose, the real purpose, that I would know of would be making it convenient for the retailer if he is carrying hazard insurance, which is made available to him through Capen & Company agents, the agency handling insurance for some of our Franchise Store owners, naturally he would want to convert that insurance coverage with a local agent. And that gives him ample time to convert to the local agent his hazard insurance, and in many instances that period of 30 days is extended.

Q. Is that insurance matter handled between the Franchise Store owner and Brown Shoe Company or the, what was the name of that company?

A. Capen & Company. C-a-p-e-n & Company.

Q. Does the Franchise Store dealer deal with them?

A. Yes, and it would also give time to set up a new accounting system.

Q. Would he need to?

A. He might continue with the accounting system, the bookkeeping system that he had previously established.

[fol. 200] Q. There is no reason why it could not continue if he so desired?

A. That is correct.

The witness was asked about the insurance provision requiring the franchise store owner to carry insurance on stock and fixtures, preferably through Brown Shoe Company. Although on direct examination he did not recollect just what the reason was, he has since given it consideration. They do prefer the retailer carry this hazard insurance with Capen and Company. They prefer that primarily so that as an account of Brown Shoe Company they are reasonably sure of the amount of coverage that he carries and they are sure that he is carrying hazard insurance in case of disaster of any kind so that he would have the protection and the coverage. Another reason is because of the

very good performance record that the various claim adjusters working through Capen and Company have had in settling claims over the years. They do have an excellent performance record, and you don't always have that. You sometimes have difficulty in always getting a prompt and adequate claim adjustment. Brown has the assurance of a satisfactory insurance carrier because of the record. Nobody guarantees it. But this company does have a record of good performance.

As to whether it is customary in the shoe business, from a credit standpoint to have customers insured for risks of that nature, he thinks it is a request that Brown's credit department makes. He does not know if their credit department insists on it. That is made whether they are a franchise dealer on the franchise program or not, for credit purposes. Brown is not the beneficiary under that insurance if a franchise holder or any other customer is indebted to Brown. The insurance is for the purpose of evidencing the financial responsibility of the retailer in the event of a casualty, so that the manufacturer may have some reasonable assurance that he may get paid for stocks that may get burned up. It is a general rule, not only with Brown Shoe Company, but a general rule throughout the industry. When you are doing business with a person you like to know he has hazard insurance for that purpose.

[fol. 201] Regarding the various benefits under the plan that the witness previously testified to, it is up to the individual store owner to decide whether he wishes to adopt any of those benefits that are offered.

Q. Do you have any opinion, Mr. Johnston, as to whether these benefits under the Franchise Program, whether it is these that keeps the store as a customer of Brown's, or is it the shoes?

Mr. Rogel: I object to that question. It is highly speculative.

Hearing Examiner Creel: It seems to me it is. I will sustain the objection. Obviously both play a different part with different people.

Mr. Burke: I think, if your Honor please, this witness has been the head of the Division, certainly has been able to form an opinion as to relative importance of these mat-

ters, due to his long experience in connection with the program. If anybody knows he certainly is the person who can properly state an opinion. I think it is a perfectly valid question.

Hearing Examiner Creel: It is too speculative to have any meaning to me. Obviously, nobody wants to buy shoes that aren't any good. That would be the first consideration. That would be the quality of the product.

Mr. Burke: I will accept that as an explanation. I will agree. I wanted something on the record.

The witness testified on direct examination that he can recognize a store design that may have been designed by the architectural service of the Brown Shoe Company. He answered that question in the affirmative because of being so familiar with Mr. Harold Moore who heads up that division in their company, the types of display and many of the brand identifications that Mr. Moore suggests to the retailer or puts in or incorporates in the suggested plan. The witness recognizes his style. That was the connotation in which he so testified.

The report form of the field representatives, shown by Commission's Exhibit 30, is not presently being used to-[fols. 202-206] day. That form was discontinued approximately a year and a half or two years ago. Another form has been used since that time. The present form eliminated the reference found on the last line of Commission's Exhibit 30, "Encourage concentration on BSC and elimination of conflicting lines." There were other changes on the form. As to whether that is a form on which the fieldman reports to the witness, he said, they formerly reported to us on that form, but not on all occasions. Many occasions it was just a written form, a regular inter-company (Tr. 407) correspondence, or the fieldman's personal company stationery. They were not always required to make that report on every call that was made to the stores.

. . . . .

[fol. 207] The witness recalls discussion during his direct examination relating to purchases by franchise stores of U. S. Rubber Company products. Under the program franchise store owners are not required to purchase from U. S.

Rubber through Brown. That is a decision that is made by the independent retailers. The franchise store owner in purchasing rubber goods from the U. S. Rubber Company deals with the salesman of the U. S. Rubber Company. The terms of the sale and the normal dealing in regard to the purchase of U. S. Rubber products are handled between the U. S. Rubber salesman and the franchise store. Brown doesn't have anything to do with that. The stores on the franchise program are free to buy rubber goods from any manufacturer that they choose, and they do. The franchise dealer makes his own decision on that.

#### Redirect examination.

The dealer is not required to accept any of the services listed on the first page of the franchise contract. On the second page of Commission's Exhibit 25-C, paragraph 4, it says that he is required to maintain and use a merchandise record system. The witness did not testify that that would be one of the reasons, along with others, that a dealer might be dropped from the program, if he did not keep **this** record system. The witness said, not that record system, a record system. That might be one of the reasons. It does not have to be specifically the record system we offer him or provide him, maybe it is an equivalent.

They request the dealers to make certain reports to Brown. Some make monthly reports; some make quarterly reports; some make semiannual reports; some make annual reports. Failure to make reports could be one reason for dropping them from the program. As to why they insist on the reports, to the extent that they do, the witness said, we ask that the dealers use the bookkeeping and ac-[fol. 208] counting system which, when used, provides a report. He has a copy for his files and in turn he sends Brown Shoe Company a copy of that report, simply because when that is done the performance record pretty much proves that function causes him to be a better retailer for himself.

These reports have value to Brown. The witness said, we refer to those from the credit point of view, to see those that we get the reports from, and we enter that information in our books. We would see where his liabilities are, we would periodically make an analysis of the report out



of St. Louis, based on the experience ratio of his business, his withdrawals that he might make personally, his ratio of net profit in relation to sales; and many times we make suggestions from our point of view that he might think will be helpful to him in strengthening his position. I know of a number that we do periodically. We keep a very close contact with them based on performance of their business from a profit point of view, from an inventory point of view, and this is done so that we can offer help, and make helpful suggestions that will aid him to improve his position.

. . . . .

The witness was asked about the changes made on the form of the Brown franchise field reports, referred to in cross-examination as Commission's Exhibit 30. He said, I think the first page is very similar to this with the exception of deleting this information right here. (Indicating) Then we were getting too vague reports from the fieldman as he called on the stores. He would just write a letter. We thought if we provided a form that covered the various phases of the business that it would prompt him to have discussions with the dealer on various phases of the dealer's business and set out various paragraphs to call those things a little more specifically to his attention, so he would more or less write regarding specifics on various phases of the operation. The elimination of the bottom line on page 30-A did not incorporate a change in practice. The fieldmen are still instructed to encourage concentration and the elimination of conflicting lines.

[fol. 209] Certain reports from the dealers are needed for credit purposes. That is why he mentioned earlier that some stores send reports only on a quarterly basis, and semiannually, and some annually. It might be a profit and loss statement or operating statement that they might have made up for themselves by their certified public accountant on a quarterly basis, if they did not use Brown's reporting system. That information that their auditor or their certified public accountant makes up for them, provides Brown's credit department with adequate information so that they can see the status of the business on a quarterly basis, or semiannual basis, or an annual basis.

The witness believes that insofar as Brown Franchise Division is concerned, they made no attempt to tell a dealer when he should have the recommended semiannual sales. He is speaking of his own division. Also, Brown announces through the trade papers semiannually when the suggested clearance sales periods will start, and they have many dealers he knows of that either break with the sale before, and some break after. When the witness has a complaint from a store that someone else has broken early, a month early or a week early, that is pretty much a problem of the individual division and he doesn't think he's qualified to answer. The witness would refer it to the selling division.

Regarding concentration on the line of shoes, they don't say [retailers] shouldn't have conflicting lines, they only encourage them not to have. That is completely from the standpoint of good retailing and not anything else. The prime reason for this provision in the franchise is that they thought it was good retailing not to carry conflicting lines. As to whether their paragraph requires them not to have lines conflicting with Brown lines, he said, that is the Brown Shoe Company lines, brands that he is carrying, not Brown Shoe Company, period. The Brown Shoe Company brand he decides to carry. Brown has lived with the situation where a man drops Roblee lines entirely and takes on another line. They have also lived with the situation where he keeps the Roblee and takes on another line and keeps the two of them. From the retailer's standpoint it would not be economically good business to carry both. He [fol. 210] should carry one or the other. That is the witness' premise of good retail thinking.

Q. Well that isn't exactly what this paragraph provides. It says, no lines conflicting with brands of Brown Shoe Company.

A. The Brown Shoe Company brands he carries. Naturally, if a man isn't going to carry a Brown Shoe Company brand, why then, he isn't going to carry the brand in that price category. He can so choose if he wishes; he makes the decision.

As to where they draw the line between dropping him off the franchise program and keeping him on with respect to conflicting lines, the witness said, well, let us assume a